

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA
3 MIAMI DIVISION
4 CASE NO. 24-cr-20051-JEM

4 UNITED STATES OF AMERICA, Miami, Florida

5 Plaintiff, May 14, 2024

6 vs. 11:46 a.m. - 4:36 p.m.

7 ALFRED LENORIS DAVIS, Volume 1

8 Defendant. Pages 1 to 163

9
10 EXCERPT OF JURY TRIAL
11 BEFORE THE HONORABLE JOSE E. MARTINEZ
12 UNITED STATES DISTRICT JUDGE

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I N D E XWITNESSEXAMINATION

JEFF M. JEAN-PIERRE

Direct Examination by Mr. Bailyn	46
Cross-Examination by Ms. Bozanic	59
Direct Examination (Resumed) by Mr. Bailyn	85
Cross-Examination by Ms. Bozanic	85
Redirect Examination by Mr. Bailyn	98

JASON BROWN

Direct Examination by Ms. Sadlo	103
Cross-Examination by Mr. Dominguez	114
Redirect Examination by Ms. Sadlo	119

ADAM J. WEISENSTINE

Direct Examination by Ms. Sadlo	122
Cross-Examination by Mr. Dominguez	140

GOVERNMENT'S EXHIBITSEXHIBITRECEIVED

1 through 8	64
9 through 13	121
14	47
15	120

1 (Call to the Order of the Court.)

2 (Voir dire was reported and intentionally
3 excised after which the following proceedings
4 were held:)

5 THE COURT: Iris, administer the oath to the
6 jurors, please.

7 COURTROOM DEPUTY: Jurors, please stand and
8 raise your right hand.

9 || (Jury panel duly sworn.)

10 THE COURT: Members of the jury, now that you
11 have been sworn, I need to explain some basic principles
12 about a criminal trial and your duty as jurors. These
13 are preliminary instructions. At the end of the trial, I
14 will give you more detailed instructions.

15 By your verdict, you will decide the disputed
16 issues of fact. I will decide all questions of law that
17 arise during the trial. And before you retire to
18 deliberate together at the end of the trial, decide the
19 case, I will then instruct you again on the rules of law
20 that you must follow and apply in reaching your decision.

21 It will be your duty to decide what happened so
22 you can determine whether the defendant is guilty or not
23 guilty of the crimes charged in the indictment. At the
24 end of the trial, I will explain the law that you must
25 follow to reach your verdict. You must follow the law as

1 I explain it to you, even if you do not agree with the
2 law.

3 You must decide the case solely on the evidence
4 presented here in the courtroom. Evidence can come in
5 many forms. It can be testimony about what someone saw
6 or heard or maybe even smelled. It can be an exhibit
7 admitted into evidence. It can be someone's opinion.
8 Some evidence proves a fact indirectly, such as a witness
9 who saw wet grass outside and people walking into the
10 courthouse carrying wet umbrellas.

11 Some indirect evidence, sometimes called
12 circumstantial evidence, is simply a chain of
13 circumstances that proves a fact. As far as the law is
14 concerned, it makes no difference whether evidence is
15 direct or indirect. You may choose to believe or
16 disbelieve either kind and should give every piece of
17 evidence whatever weight you think it deserves.

18 What's not evidence? Certain things are not
19 evidence and must not be considered. I will list them
20 for you now.

21 Statements and arguments of the lawyers. In
22 their opening statements and closing arguments, the
23 lawyer will discuss the case, but their remarks are not
24 evidence.

25 Questions and objections of the lawyers. The

1 lawyers' questions are not evidence. Only the witnesses'
2 answers are evidence. You should not think that
3 something is true just because a lawyer's question
4 suggests that it's true. For instance, if a lawyer asks
5 the witness, You saw the defendant hit his sister, didn't
6 you, that question is not evidence whatsoever of what the
7 witness saw or what the defendant did, unless the witness
8 agrees with it.

9 There are Rules of Evidence that control what
10 can be received into evidence. When a lawyer asks a
11 question or offers an exhibit, and the lawyer on the
12 other side thinks that it is not permitted by the Rules
13 of Evidence, that lawyer may object. If I overrule that
14 objection, the question may be answered or the exhibit
15 may be received. If I sustain the objection, then the
16 question cannot be answered or the exhibit cannot be
17 received. Whenever I sustain an objection, you must
18 ignore the question and not try to guess what the answer
19 would have been.

20 Sometimes I may order that evidence be stricken
21 or that you disregard or ignore evidence. That means
22 that when you are deciding the case, you must not
23 consider that evidence. Some evidence is submitted only
24 for a limited purpose. When I instruct you that an item
25 of evidence has been admitted for a limited purpose, you

1 must consider it only for that limited purpose and no
2 other.

3 Credibility of witnesses. In reaching your
4 verdict, you may have to decide what testimony to believe
5 or disbelieve. You may believe everything a witness
6 says, part of what a witness says, or none of what a
7 witness says. In considering the testimony of any
8 witness, you may take into account the opportunity and
9 ability of the witness to see or hear or know the things
10 testified to, the witness's memory, the witness's manner
11 while testifying, the witness's interest in the outcome
12 of the case, and any bias or prejudice, whether other
13 evidence contradicted the witness's testimony, the
14 reasonableness of the witness's testimony in light of all
15 the evidence, and any other factors that bear on
16 believability. I will give you additional instructions
17 for you to determine credibility of witnesses at the end
18 of the case.

19 As you know, this is a criminal case. There
20 are three basic rules about a criminal case that you must
21 keep in mind.

22 First, the defendant is presumed innocent until
23 proven guilty. The indictment against the defendant
24 brought by the Government is only an accusation, nothing
25 more. It is not proof of guilt or anything else. The

1 defendant, therefore, starts out with a clean slate.

2 Second, the burden of proof is on the
3 Government until the very end of the case. The defendant
4 has no burden to prove innocence or to present any
5 evidence or to testify. Since the defendant has the
6 right to remain silent and may choose whether to testify,
7 you cannot legally put any weight on a defendant's choice
8 not to testify. It is not evidence.

9 Third, the Government must prove the
10 defendant's guilt beyond a reasonable doubt. I'll give
11 you further instructions on this point later, but bear in
12 mind that the level of proof required is high.

13 Our law requires jurors to follow certain
14 instructions regarding their personal conduct in order to
15 help assure a just and fair trial. I will now give you
16 some of those instructions.

17 Do not talk, either among yourselves or with
18 anyone else, about anything related to the case. You may
19 tell people with whom you live and your employer that you
20 are a juror and give them information about when you will
21 be required to be in court, but you may not discuss with
22 them, or anyone else, anything related to the case.

23 Do not at any time during the trial request,
24 accept, agree to accept or discuss with any person any
25 type of payment or benefit in return for supplying any

1 information about the trial. You must promptly tell me
2 about any incident you know of involving an attempt by
3 any person to improperly influence you or any member of
4 the jury.

5 Do not visit or view the premises or place
6 where the charged crime was allegedly committed or any
7 other premises or places involved or mentioned in the
8 case. And you must not use internet maps or Google Earth
9 or any other program or device to search for or view any
10 location discussed in the testimony.

11 Do not read, watch, or listen to any accounts
12 or discussions related to the case which may be repeated
13 by newspapers -- excuse me, reported by newspapers,
14 television, radio, internet websites, or any other news
15 media. Do not attempt to research any fact, issue or law
16 relating to this case, whether by discussion with others,
17 by library or internet research, or by any other means or
18 source.

19 In this age of instant electronic
20 communications and research, I want to emphasize that in
21 addition to not talking face-to-face with anyone about
22 this case, you must not communicate with anyone about the
23 case by any other means, including telephone, text
24 messages, email, internet chat, chat rooms, blogs, social
25 networking websites, and apps, such as Facebook,

1 Instagram, Snapchat, YouTube, Twitter, X, or anything
2 else that's been invented in the last 20 minutes. You
3 may not use any similar technology or social media, even
4 if I have not specifically mentioned it.

5 You must not provide any information about the
6 case to anyone by any means, and that includes posting
7 information about the case, what you're doing in the case
8 on any device or Internet site, including blogs, chat
9 rooms, social websites, or any other means.

10 I know that people take pictures of what
11 they're having for lunch and post it on the Internet. I
12 can't imagine who cares, but, you know, don't. I don't
13 care what you eat, and I don't really think that anybody
14 cares what you're doing here now. After it's over, you
15 can do whatever you want about it, but by no means should
16 you be discussing what's going on here. The reason for
17 that is simple. In order to discuss something, you have
18 to make up your mind about something. You have to decide
19 what's real and what's not. Don't. It's just not worth
20 it.

21 You also must not use Google or otherwise
22 search for any information about the case or the law that
23 applies to the case, or the people involved in the case,
24 including the defendant, the witnesses, the lawyers, the
25 Judge. It's important that you understand why these

1 rules exist and why they're so important.

2 Our law does not permit jurors to talk with
3 anyone else about the case or to permit anyone to talk
4 with them about the case because only you are authorized
5 to reach a verdict. Only you have been found to be fair,
6 and only you have promised to be fair. No one else is so
7 qualified.

8 Our law also does not permit jurors to talk
9 among themselves about the case until I tell you to begin
10 your deliberations because premature discussions can lead
11 to premature decisions.

12 Our law also does not permit you to visit a
13 place discussed in the testimony. First, you can't be
14 sure that the place is in the same condition as it was on
15 the day in question. Second, even if it is in the same
16 condition, once you go to a place discussed in the
17 testimony to evaluate the evidence in light of what you
18 see, you become a witness, not a juror. As a witness,
19 you may now have a mistaken view of the scene that
20 neither party may have a chance to correct. That's just
21 not fair.

22 Finally, our law requires that you not read or
23 listen to any news accounts of the case and you not
24 attempt to research any fact, issue, or law related to
25 the case. Your decision must be based solely on the

1 testimony and other evidence presented in this courtroom.

2 Also, the law often uses words and phrases in
3 special ways so it's important that any definitions you
4 hear come only from the bench here, not from any other
5 source. It wouldn't be fair to the parties for you to
6 base your decision on some reporter's view or opinion or
7 on some other information that you acquire outside the
8 courtroom.

9 These rules are designed to help guarantee a
10 fair trial and our law accordingly sets forth serious
11 consequences if the rules are not followed. I trust that
12 you understand and appreciate the importance of following
13 these rules and to -- and in accord with your oath and
14 promise, I know you will do so.

15 Questions sometime arises as to whether
16 individual members of the jury will be permitted to take
17 notes during the trial. The desire to take notes is
18 perfectly natural, especially for those of you who are
19 accustomed to taking notes because of your schooling or
20 the nature of your work. It is requested, however, that
21 jurors not take notes during the trial.

22 One of the reasons for having a number of
23 jurors -- persons on the juror is to gain the advantage
24 of your several and individual memories concerning the
25 testimony presented before you. And while some of you

1 might feel comfortable taking notes, other members of the
2 jury may not have skill or experience in note-taking and
3 may not wish to do so. We don't want this to turn into a
4 note-taking contest where somebody says, Your memory is
5 wrong because, look, my notes are perfect, Look, it's
6 outlined, everything is there, and I wrote it down so
7 this must be right.

8 No. Your memory is just as valuable as anybody
9 else's. State your position. Do not stick to it if you
10 don't think it's real, if you don't that think that it's
11 correct, but you have the right to express your opinion.

12 An indictment in a criminal case is merely the
13 accusatory paper which states the charge or charges to be
14 determined at the trial, but it is not evidence against
15 the defendant or anyone else. Indeed, the defendant
16 entered a plea of not guilty and is presumed by the law
17 to be innocent. The Government has the burden of proving
18 the defendant's guilt beyond a reasonable doubt. And if
19 it fails to do so, you must find the defendant not
20 guilty.

21 Because the Government has the burden of proof,
22 it will go forward and present its testimony and evidence
23 first. After the Government finishes or rests, what we
24 call its case in chief, the defendant may call witnesses
25 and present in evidence, if he wishes to do so. You will

1 remember, however, that the law does not require the
2 defendant to prove innocence or produce any evidence at
3 all. And no inference whatsoever may be drawn from the
4 defendant's election not to testify in the event that
5 they should so elect.

6 You'll notice that the court stenographer is
7 making a complete stenographic record of all that's said
8 during the trial, including the testimony of the
9 witnesses in case it should become necessary at a future
10 date to prepare printed transcripts of any portion of the
11 trial proceedings. Such transcripts, however, if
12 prepared at all, will not be prepared in sufficient time
13 or appropriate form for your review during your
14 deliberations, and you should not expect to receive any
15 transcripts. You'll be required to rely upon your
16 individual and collective memories concerning what the
17 testimony was.

18 I remember at one occasion, sometimes I can
19 look over and I can see the rough draft, and I can
20 remember what was said because it was just said.
21 Besides, I have been doing this a long time. And
22 although my memory stinks, it doesn't about trial
23 testimony. I have a pretty good memory about trial
24 testimony. But I remember one time I looked over and it
25 showed that I had said something was gynecological. I am

1 pretty sure that I have never used that word, and I know
2 it wasn't right then. The bottom line is, it's going --
3 they have a tape recording going on at the same time, but
4 what she's doing, she is not typing on a typewriter or a
5 computer. She's typing into a word processor of some
6 sort that combines all these things into -- it's voodoo.
7 That's what it is. I don't know how they do it, but they
8 do it, and they are really good at it, but it takes them
9 a while. So don't expect to get transcripts. You can
10 ask for them. But the answer is going to be no, there's
11 no transcripts available, rely on your memory.

12 On the other hand, any papers and other
13 tangible exhibits received in evidence during the trial
14 will be available to you for study during your
15 deliberations. On some occasions during the trial,
16 exhibits may be handed to you for a brief inspection
17 there in the jury box. Others will not be shown to you,
18 but do not be concerned because, as I said, you will get
19 to see and inspect at the end of the case all the
20 exhibits that are received in evidence.

21 The indictment charges defendant Alfred Lenoris
22 Davis with one crime, the crime charged in the indictment
23 is called an a count. Count I of the indictment charges
24 that the defendant did knowingly, and with intent to
25 defraud, use a counterfeit access device, that is a

1 counterfeit Florida driver's license, said conduct
2 affecting interstate and foreign commerce in violation of
3 Title 18, United States Code, Section 1029(a).

4 It is a federal crime to use counterfeit credit
5 cards or other access devices. Defendant can be found
6 guilty of this crime only if the Government proves the
7 following facts beyond a reasonable doubt:

8 First, the defendant knowingly used a
9 counterfeit access device. Second, the defendant knew
10 the access device was counterfeit and acted with the
11 intent to defraud or deceive. And third, the defendant's
12 conduct affected interstate or foreign commerce.

13 An access device is a credit card, plate, code,
14 account number, electronic serial number, mobile
15 identification number, personal identification number, or
16 other means of account access that can be used, alone or
17 in conjunction with another access device to get money,
18 goods, services, or any other thing of value, or that can
19 be used to initiate a transfer of funds, other than a
20 transfer originated solely by a paper instrument.

21 A counterfeit access device is an access device
22 that's counterfeit, fictitious, altered or forged, or an
23 identifiable component of an access device or a
24 counterfeit access device.

25 To use includes any effort to obtain money,

1 goods, services, or any other thing of value, or to
2 initiate a transfer of funds with a counterfeit access
3 device.

4 To act with intent to defraud means to act with
5 intent to deceive or cheat, usually for personal
6 financial gain, or to cause financial loss to someone
7 else.

8 The heart of the crime is the knowing use of a
9 counterfeit access device with intent to defraud. The
10 Government does not have to prove that anyone was
11 actually deceived or defrauded.

12 The term interstate commerce refers to any
13 transaction or event that involves travel, trade,
14 transportation, or communication beyond a place in one
15 state and a place in another state.

16 The term foreign commerce relates to any
17 transaction or event that involves travel, trade,
18 transportation, or communication between a place in the
19 United States and a place outside the United States.

20 The Government does not have to prove that the
21 defendant specifically intended to interfere with or
22 affect interstate or foreign commerce, but the Government
23 must prove that the natural consequence of the acts
24 alleged in the indictment would be to affect interstate
25 or foreign commerce. For example, if you find beyond a

1 reasonable doubt that the device was used to purchase
2 goods from another state or the device was used to
3 purchase goods manufactured outside the State of Florida,
4 you may find that interstate foreign commerce has been
5 affected.

6 The trial will now begin. First, the
7 Government will make an opening statement. And we'll do
8 that after lunch so you'll have an opportunity to have a
9 full tummy before we get started, which is simply an
10 outline to help you understand the evidence as it comes
11 in.

12 Next, the defendant's attorney may, but do not
13 have to, make opening statements. Opening statements are
14 neither evidence nor argument.

15 The Government will then present its witnesses,
16 and counsel for defendant may cross-examine them.
17 Following the Government's case, the defendant may, if he
18 wishes, present witnesses whom the Government may
19 cross-examine.

20 After all the evidence is in, the attorneys
21 will present their closing arguments, summarize and
22 interpret the evidence for you, and I will instruct you
23 on the law. After that, you'll go to the jury room to
24 decide your verdict.

25 Now, we're going to break now for lunch, but I

1 want to remind you that you're not to discuss the case
2 with anyone or permit anyone to discuss it with you.
3 Until you retire to the jury room at the end of the case
4 to deliberate on your verdict, you're simply not to talk
5 about this case. Even though this case is only going to
6 be a day and a half or two days long, you're going to get
7 sick of hearing this because I am going to read it to you
8 every time I get a chance, although I may skip parts of
9 it.

10 Also, remember, you are not to read or listen
11 to anything touching on this case in any way. If anyone
12 should try to talk to you about the case, bring it to my
13 attention promptly.

14 Keep in mind you must not do any research or
15 make any investigation about the case on your own. The
16 only evidence in this case is the testimony of the
17 witnesses that you hear in court and the evidence that is
18 introduced during the official proceedings in the
19 courtroom.

20 Also, remember you must not have any contact
21 with the attorneys, parties or witnesses in the case. If
22 you should see them, keep in mind that they are not being
23 rude to you, they are required to avoid any contact with
24 you, and they are not permitted to talk to you, just as
25 you are not permitted to talk to them.

1 Finally, remember you must not form any opinion
2 about this case until all the evidence is in. You are
3 required to keep an open mind until you start your
4 deliberations at the end of the case.

5 Now I'm going to excuse you for lunch. We're
6 going to recess until 1:30. Now, let me tell you, there
7 is a cafeteria on the 7th floor. If there is a tornado
8 outside, I would recommend you go to the 7th floor to
9 eat. Otherwise, there's lots of places around here to
10 eat. There is Chick-Fil-A right across the street at the
11 Brightline station. There's one of those food trailers
12 or food trucks right outside the Brightline. Miami-Dade
13 College is one block in that direction. Where there's
14 kids, there's food. There is a McDonald's. There's all
15 sorts of places around there.

16 If you walk down to Flagler Street, you'll find
17 Peruvian restaurants, Mexican restaurants, all sorts of
18 places that are reasonably decent to eat. Do not
19 hesitate to go to any of those places and try them out.
20 You might find something interesting.

21 But be back here at 1:30.

22 Now, I will let you go into the jury room and I
23 will have Iris go with you and she will tell you how to
24 come back in, but you come back in through this hallway
25 and if you get here early and you want to just hang out,

1 hang out here. Do not use the bathrooms on the floor.
2 You're not supposed to be interacting with other people,
3 including the parties and the lawyers or witnesses or
4 friends or family. So please, there's only two bathrooms
5 on this floor. It's better if you use the bathrooms in
6 the jury room. There's two bathrooms in the jury room.
7 There's water in the jury room. Try to stay away from
8 the lobby. There's only one set of elevators in this
9 building. Use them to come up here and then get off.

10 If you get on the elevator, and you see one of
11 the parties' lawyers, they'll probably get off the
12 elevator. They're supposed to do that they're not mixing
13 with you. They're not being rude to you. You haven't
14 forgotten your deodorant or anything. It's just they're
15 trying to avoid the appearance of impropriety, which
16 sometimes is just as important as the actual fact of
17 impropriety.

18 When you're sitting in the jury room, I know --
19 jury box, I know that some of you indicated that you
20 might have physical problems that you might need to stand
21 up once in a while. That's fine. Sit on one of the end
22 chairs. There's no seating chart. I mean, I put you in
23 there because I called you in the order that you were
24 being called in, but you don't have to sit in that order.

25 I don't want you doing a roller-derby to bump

1 people out of the way to get to a good, preferable chair
2 but we try to be as safe as we can. You will notice we
3 have those shields so that you're not exposed to any
4 witnesses that come in here. This is not a case where
5 there's a bunch of people coming in and walking around,
6 but I like to keep -- It doesn't seem to bother anybody
7 and I'd rather have -- I'd rather be safe than sorry. So
8 we try to be as helpful as we can in keeping people from
9 breathing on you, but you are all on your own. If you
10 want to wear a mask, you're welcome to wear a mask, but I
11 don't know that it's actually necessary at this point.

12 In any event, I'll excuse you now to go into
13 the jury room. Be back here at 1:30, which is an hour
14 and 20 minutes. It should be plenty of time.

15 COURT SECURITY OFFICER: All rise.

16 (Jury exits at 12:09 p.m.)

17 THE COURT: You may be seated.

18 When we're finished talking, I would appreciate
19 it if you'd leave the floor as soon as possible so that
20 when the jury comes out, the lobby is clear.

21 When we come back, we'll start -- how long do
22 you need for openings?

23 MR. BAILYN: Less than ten minutes from the
24 Government, your Honor.

25 THE COURT: Defense, what is your position?

1 MS. BOZANIC: Same. I don't think it's going
2 to take --

3 THE COURT: All right. So I'll give you 15
4 minutes each so we don't have -- we'll cut it down then.

5 You asked earlier about motions. Are you
6 talking about the motions in limine?

7 MS. BOZANIC: Judge, the United States is
8 attempting to introduce some 404(b) materials and a prior
9 conviction -- well, they are arguing -- one of the
10 arguments they are making is that the reason why my
11 client might have used a fraudulent driver's license is
12 because he is a convicted felon, and that's their theory.

13 I would ask that the Court does not allow for
14 them to introduce prior convictions. They actually
15 provided two. My client's report at some point was ran.
16 Other people's credit reports were ran. There was a
17 credit report. There was a background check. The
18 inquiry could have resulted in a bad credit report. It
19 could have resulted in a bad -- somebody who had an
20 eviction or a criminal history.

21 So for the Government to say, hey, we believe
22 that he used a fraudulent driver's license because he is
23 a convicted felon is just a theory. There is absolutely
24 no evidence of that, and I would ask that the jury be
25 instructed that there would be a negative inference if

1 his report was ran, whether that's a credit report or
2 background check, that there would be a negative
3 inference, as opposed to mentioning that he is a
4 convicted felon. And I would also object to any
5 convictions, criminal convictions being introduced for
6 the purpose of establishing this Government's theory that
7 that is the reason why.

8 THE COURT: Well, what I was going to say is,
9 before you introduce any evidence of prior convictions,
10 tell me that you're going to do it and then tell me why
11 you're going to do it and what your authority is for
12 doing it, and I'll rule at that point.

13 I think that in a vacuum it's not easy to make
14 a determination on that, and I would assume that the
15 Government is acting in good faith and will tell us
16 before they mention it in the presence of the jury as to
17 why they would be doing that.

18 MR. BAILYN: Yes, Your Honor. This may be
19 helpful just for opening statement because we have
20 noticed 404(b) evidence of the defendant's prior
21 conviction, as well as his prior tenancy at this exact
22 same condominium unit. The Government offered the
23 defense to stipulate merely to the fact that the
24 defendant is a convicted felon. The defense refused to
25 stipulate.

1 We do have a theory of the case that the
2 defendant lied about who he was because he was a
3 convicted felon. The idea that he was trying to hide his
4 eviction report or credit report is entirely contradicted
5 by the evidence because the condominium association
6 didn't run an eviction report, didn't run a credit
7 report. It solely ran a criminal background check for
8 the date charged in the indictment, April 13, 2023.

9 So we are happy to -- and I know that the Court
10 mentioned this to my colleague during calendar call --
11 introduce the fact of his felony conviction through many
12 different ways that can vitiate any of the prejudice that
13 the defendant is concerned about.

14 I don't intend to introduce the judgments of
15 conviction, although I do have the certified copies, both
16 of the defendant's state and federal conviction with me.
17 We would merely ask that the special agent be allowed to
18 simply say he ran the defendant's background, and, yes,
19 he does have a criminal history. That's it. We're not
20 trying to get into the facts of conviction, when he was
21 convicted, whether it was state, whether it was federal,,
22 but the fact that the defendant is a convicted felon is
23 inextricably intertwined with this case. It is a motive
24 for him to lie about who he was.

25 THE COURT: Okay. We'll talk about it before

1 the opening statement. You can be back at 1:15, and
2 we'll give you five minutes each to argue it, although
3 you seemed to have argued it already.

4 MS. BOZANIC: There is another issue that the
5 Government wanted to introduce some 404(b) evidence
6 regarding a lease in 2018. In that background check,
7 there was an eviction check, a credit report check, and a
8 background check. It was done with a different driver's
9 license, also in the name of Rod Lesperance. So that
10 would be another argument we would need to make in front
11 of your Honor.

12 THE COURT: What is that taking about?

13 MR. BAILYN: Your Honor, so we filed a notice
14 of intent to introduce evidence. Let me just briefly
15 explain the defendant's crime and why this evidence is
16 relevant.

17 The defendant used a fraudulent -- a
18 counterfeit driver's license to become an occupant at
19 Unit 2004 at 400 Sunny Isles. This was in 2023.

20 THE COURT: Okay.

21 MR. BAILYN: In 2018, the defendant did the
22 exact same thing at the exact same apartment building
23 with a driver's license with the exact same name and
24 exact same driver's license number. The defendant
25 committed an identical fraud against the same victim just

1 a few years before.

2 And the reason that the defendant in 2023, as
3 he's been charged, had to use the name Rod Lesperance was
4 because he used the name Rod Lesperance against that
5 exact same condominium building just a few years before.
6 This was all part of a years-long scheme for him to
7 live --

8 THE COURT: What's the prejudice in that?

9 MS. BOZANIC: Judge, the prejudice is that the
10 Government doesn't have any evidence that my client is
11 the one who committed the crime in 2023, in April. And
12 so they're trying to introduce --

13 THE COURT: Doesn't that go to the weight of
14 it? Isn't that what you're going to be arguing? You can
15 argue that to the jury, but it's --

16 MS. BOZANIC: It's extremely prejudicial,
17 Judge. It's very remote in time. It happened in 2018,
18 and it's character evidence that's not admissible. It
19 goes to show the propensity that he is, more likely than
20 not, to commit the second crime or the crime that he is
21 charged with in 2023.

22 THE COURT: You're saying it might not even be
23 him.

24 MS. BOZANIC: Well, Judge, it is a driver's
25 license with a photo that looks like him.

1 THE COURT: Well, that's precisely why it's
2 admissible.

3 MS. BOZANIC: And I think that they have --
4 they also have a property manager, who -- I believe he is
5 on the witness list. He is supposed to testify that he
6 knew that Mr. Davis -- he knew my client as Rod
7 Lesperance.

8 Judge, the first 404(b) notice that was filed
9 on April 23rd did not mention anything about these
10 documents. My investigator actually went to speak to
11 Jeff Jean-Pierre, who is the property manager on May 1st.
12 That witness told my investigator that no other documents
13 existed regarding the 2018 lease.

14 Hours after that conversation, I got a notice
15 that the Government was sending additional materials.
16 And on May 2nd, I was able to download a lease from 2018.
17 That lease was never provided before the original 404(b)
18 notice, it wasn't in the 404(b) notice, and when the
19 Government argued or made out their argument in the
20 404(b) notice, somewhere in the conclusion they
21 specifically say that they are trying to deduce that my
22 client was known as Rod Lesperance through both
23 testimony, which I imagine was Jean-Pierre, and the
24 defendant's counterfeit driver's license. There was no
25 mention of this whole new lease and the background check

1 from 2018. On May 8th, they filed a notice of --
2 attempting to introduce those documents. I was a little
3 shocked because I did not know they were trying to
4 introduce the 2018 paperwork.

5 So for those reasons, I think that, first of
6 all, it's prejudicial. Second --

7 THE COURT: If it weren't prejudicial, it
8 wouldn't be relevant. The question is, is it unfairly
9 prejudicial.

10 MS. BOZANIC: It is, Judge.

11 THE COURT: Well, I mean, don't argue it is
12 prejudicial because if it wasn't prejudicial, it wouldn't
13 be relevant; would it?

14 MS. BOZANIC: Judge, it's overly prejudicial
15 because the Government is using cases where there -- you
16 know, there are cases where something --

17 THE COURT: You're dancing around my comment.
18 I guess you don't have an answer to that.

19 Go ahead.

20 MS. BOZANIC: It is highly prejudicial, Judge,
21 because my client is charged with a crime, one single
22 count, that happened in 2023. Now, they're trying to say
23 he did this again in 2018, and now they are --

24 THE COURT: 404(b) does permit other crimes to
25 be entered, if it shows motive, method of operation, all

1 sorts of things; doesn't it?

2 MS. BOZANIC: That is true, Judge, but it does
3 not show the motive or the method of operation. The
4 first lease in 2018 was submitted -- he was added as a
5 resident for a lease under the name of Booker Warren.
6 The second one in 2023 --

7 THE COURT: So you don't think that submitting
8 a driver's license with the same picture and the same
9 name as he did, supposedly or allegedly at a later time,
10 shows that method of operation? I think an argument can
11 be made very logically that it does.

12 MS. BOZANIC: Judge, the first thing they have
13 to do is prove that it was him who did it. And in
14 2018 --

15 THE COURT: Doesn't the picture give them the
16 opportunity to prove that?

17 MS. BOZANIC: Circumstantially, yes, your
18 Honor.

19 THE COURT: I don't think it's circumstantial
20 at all. I mean, I think most of the time prosecutors
21 would kill -- and I am being facetious -- to get a
22 picture of a prior person, and they have a picture.

23 So, no, I'll overruled your objection. I'll
24 permit it.

25 MS. BOZANIC: Judge, you are permitting --

1 THE COURT: I'll permit both of them.

2 MS. BOZANIC: Which one?

3 THE COURT: Both, both, the thing that you just
4 argued about and the thing you argued about ten minutes
5 ago.

6 MS. BOZANIC: I'm sorry.

7 THE COURT: I was going to say that we argue
8 about it at 1:15, but we've already argued about it. So
9 I have already decided. I will permit it over objection.

10 MS. BOZANIC: In that case, if you are allowing
11 the certified convictions, there is case law that allows
12 for the Government to just mention what the Government
13 just said, to just mention that his background check
14 would have had a criminal history, not to introduce the
15 actual convictions.

16 THE COURT: They offered you that as an option,
17 and you rejected it. So at this point, I will permit
18 them to do whichever way they wanted.

19 MS. BOZANIC: Judge, the rulings in the
20 previous cases were -- I am talking about case law. If
21 your Honor rules a certain way and says that certified
22 convictions or the previous criminal history is
23 admissible, then usually the judge -- or in previous
24 cases, the judge would say, I will allow them just to
25 talk about the fact that he has a criminal history. So I

1 would ask your Honor --

2 THE COURT: They can do that if they want to,
3 but I think they can also introduce -- you know, prove it
4 in whatever way they want to prove it. I'll permit it.

5 MS. BOZANIC: Judge, it's very prejudicial.

6 There are two convictions. There is a 2004 and there is
7 a 2010. There is no reason why the Government should
8 walk around and introduce two different criminal
9 convictions.

10 THE COURT: Anything that is probative is
11 prejudicial.

12 Do you understand --

13 MS. BOZANIC: Yes, your Honor.

14 THE COURT: -- the difference?

15 It has to be unfairly prejudicial or in
16 violation of the Rules, and I do not think that it is. I
17 will permit it.

18 We'll be in recess. We don't have to be back
19 at 1:15 because you've already done your argument.

20 MR. BAILYN: So we'll begin at 1:30?

21 THE COURT: 1:30.

22 MR. BAILYN: Thank you, your Honor.

23 (Court recessed at 12:21 p.m. to 1:34 p.m.)

24 (Jury enters at 1:34 p.m.)

25 THE COURT: You may be seated. I'm going to

1 count you every time because one time somebody followed
2 the jury into the jury room -- I have no idea why -- and
3 we had an extra person sitting there for about 30
4 seconds. I did figure it out eventually.

5 As I told you, first, the Government will make
6 an opening statement, which is simply an outline to help
7 you understand the evidence as it comes in. Then the
8 defense may -- but they don't have to -- make opening
9 statements. They have asked for and I have given them
10 each 15 minutes. The statements that the lawyers make
11 now as well as the arguments that they present to you at
12 the end of the trial are not to be considered by you
13 either as evidence in the case, which comes only from the
14 witnesses and the exhibits, or as your instruction on the
15 law, which comes from here.

16 These statements or arguments are,
17 nevertheless, intended to help you understand the
18 evidence as it comes in, the issues or disputes you will
19 be called upon to decide, as well as the positions taken
20 by both sides.

21 So I ask that you now given the lawyers your
22 close attention as I recognize them in turn for the
23 purpose of making an opening statement.

24 The light -- there is a green light that will
25 be showing up somewhere, yeah, right over there and over

1 here. I ask that the lawyers remain at the lectern. I
2 don't like lawyers schmoozing around and leaning over the
3 railing. You may turn the lectern to face the jury.

4 When there's, let me see, two minutes to go,
5 the green light will start flashing. When there's one
6 minute to go, the yellow light comes on. When the red
7 light comes on, you turn into pumpkins and you must go
8 home.

9 You may proceed, sir.

10 MR. BAILYN: Thank you, your Honor.

11 Ladies and Gentlemen of the Jury, the
12 defendant, Alfred Davis, lied about the most basic aspect
13 of his life. He lied about who he was. And he did it so
14 he could pass a background check and gain access to a
15 luxury condominium building overlooking the bay. He
16 gained access to a building he had no right to be in. He
17 gained access to an apartment he had no right to live in.
18 And he didn't just do this once. He did it twice, the
19 exact same apartment building, once in 2018, once in
20 2023.

21 MS. BOZANIC: Objection.

22 THE COURT: Overruled.

23 MR. BAILYN: The defendant defrauded this
24 building because, this evidence will show, there was
25 something he wanted to hide. This defendant is a

1 convicted felon, state conviction, federal conviction.

2 MS. BOZANIC: Objection.

3 THE COURT: Overruled.

4 MR. BAILYN: And he had to use a different
5 identity to pass a background check. So he pretended he
6 was Rod Lesperance. He used a counterfeit driver's
7 license with a picture of himself, but with someone
8 else's date of birth, someone else's driver's license
9 number, and someone else's name.

10 Now, you'll learn that condo buildings are not
11 Fort Knox. They don't always have the tools necessary to
12 protect themselves from being defrauded, and it wasn't
13 until the Federal Government started looking for this
14 defendant that his fraud was uncovered.

15 MR. DOMINGUEZ: Objection.

16 THE COURT: There is no tag-teaming. If she's
17 handling it, she's handling it.

18 MR. DOMINGUEZ: That's fine, Judge.

19 THE COURT: If you're handing it, you're
20 handling it.

21 MS. BOZANIC: Judge, objection.

22 Can we come sidebar?

23 THE COURT: No. Objection is overruled.

24 MR. BAILYN: As the Judge explained, this
25 defendant is charged with one crime, access device fraud.

1 Now, there are three elements to that crime. An element
2 is something that we have to prove for you to find this
3 defendant guilty.

4 The first element is that the defendant used a
5 counterfeit access device. In this case, the evidence of
6 that will be a fake or counterfeit driver's license, a
7 driver's license with this defendant's photograph.

8 Second, the defendant had to intend to defraud
9 or deceive. In this case, the defendant lied about who
10 he was.

11 Third, the defendant's conduct had to affect
12 interstate commerce. In this case, the defendant
13 defrauded a national background check.

14 So let me briefly describe for you the facts
15 that you will learn during this trial. In 2018, the
16 defendant decided that he wanted to live at 400 Sunny
17 Isles. It is a beautiful condominium building, and
18 someone he knew had a lease there. The defendant added
19 himself as an occupant.

20 You'll learn during this trial that there's an
21 approval process before somebody can be added as an
22 occupant or as a resident. That approval process has a
23 few steps. The first one is that when someone signs a
24 lease. Next what happens? Well, someone has to go
25 through the approval process and be approved by the

1 condominium association. How does the condominium
2 association do that?

3 First, they ask who you are and to verify who
4 you are, they ask for a driver's license or they ask for
5 a passport. They then take the information that you've
6 provided them, and they do a background check. These
7 background checks can check for a few things; eviction
8 history, your credit report, or your criminal background.
9 After running the background check, the condominium
10 association will make a decision as to whether or not to
11 approve you as a resident.

12 Now, the condominium association has the
13 discretion to approve or deny, but you'll learn during
14 this trial that this background check process is a very
15 important part of that decisionmaking process. That's
16 how it's supposed to work. But what did the defendant do?

17 Well, when he was asked to prove who he was, he
18 provided a counterfeit driver's license, a driver's
19 license that said his name was Rod Lesperance. It gave
20 another date of birth, and it had a different driver's
21 license number. So when the condominium association ran
22 a background check, a background check that they should
23 have been running on Alfred Davis, they did not find that
24 he was a felon. He came back clean. That was for Unit
25 903 in 2018.

1 This defendant did it again. In 2023, he
2 decided he wanted an upgrade. He wanted to live in
3 Unit 2004. His mother is the person on the lease of
4 Unit 2004. You'll hear during this trial there's no
5 evidence of her ever living there. This defendant wanted
6 to add himself as an occupant, so he was asked by the
7 property management, just like he was asked before, You
8 need to provide your driver's license or identification
9 so that we can go through the approval and background
10 check process. And just like before, the defendant used
11 a counterfeit driver's license. It had a picture of the
12 defendant, the name of Rod Lesperance, different date of
13 birth, different driver's license number. And just like
14 before, the defendant's background check came up clean,
15 and he was approved.

16 Those are the facts of this case. So how will
17 we prove it to you? First, you'll hear from someone from
18 the property management at 400 Sunny Isles. I mentioned
19 him before. His last name is Jean-Pierre. He's worked
20 himself up to be an assistant property manager, and he'll
21 explain to you how this background check approval process
22 works. He'll tell you why the condominium asks for
23 information. He'll tell you how the condominium
24 association keeps records, and he'll show you photocopies
25 of the two counterfeit driver's licenses that this

1 defendant submitted, both with his picture on them.

2 Next you'll hear from Jason Brown. Jason Brown
3 runs backgrounds and background checks. That's the
4 background check company that performed the background
5 checks in this case. And his testimony will be important
6 because he'll explain to you that interstate commerce
7 element I mentioned earlier. He'll explain to you that
8 these national background checks pull data from more than
9 just the State of Florida. They pull it from counties
10 and districts and states all over the country. That's
11 what makes this a federal crime.

12 And third, you'll hear from Special Agent
13 Weisenstine. He was able to gather records from the
14 Florida Department of Motor Vehicles. He'll show you the
15 defendant's actual driver's license records, and he'll
16 show you the records that come back from the counterfeit
17 driver's license that the defendant used.

18 By the end of this trial, you will have
19 everything you need to find those three elements that I
20 just discussed. But let me make this clear, this case
21 isn't about failure to pay rent. This case isn't about
22 being a good or bad tenant. This case is about a lie, a
23 lie about who the defendant was. Because of that lie, he
24 gained access to something that he was not entitled to.
25 That is access device fraud.

1 THE COURT: Defense?

2 MS. BOZANIC: Thank you, your Honor.

3 This case is about pieces of a puzzle. Ladies
4 and Gentlemen of the Jury, again, my name is Zeljka
5 Bozanic, and along with Humberto Dominguez, my
6 co-counsel, it is my honor to represent Alfred Davis
7 today.

8 The reason why we're here today is because
9 Mr. Davis has pled not guilty, and in this country when
10 you plead not guilty, you're presumed innocent. The
11 Government has the burden to prove the case beyond a
12 reasonable doubt. They're the ones who are supposed to
13 put these pieces of a puzzle for you and convince you
14 that somebody is guilty beyond a reasonable doubt. Not
15 only do they have to prove beyond a reasonable doubt
16 somebody committed a crime, they have to prove every
17 single element, they have to prove each and every single
18 element beyond a reasonable doubt.

19 Now, everybody has a constitutional right to go
20 to trial and be judged by a jury, be judged by a jury,
21 not just the judge, not just the Government, not just the
22 attorneys. The reason why we have this constitutional
23 right to be judged by the jury is because you're those
24 jurors who are reasonable people that we thought would be
25 the right persons to sit on this jury. You are the

1 people who are supposed to use your commonsense. You
2 don't need to know what the law is because you'll be
3 instructed on what the law is. You don't need to concern
4 yourself with, you know, whether you know what the law
5 says about a certain element. All of these instructions
6 are going to be given to you.

7 All I'm asking you to do is have an open mind
8 and listen to the evidence. What the Government just
9 said is not evidence at all. This is their theory. They
10 believe they got it right. I'm asking you to keep your
11 mind open, to look at the evidence, to listen to the
12 evidence, where does the evidence come from? It comes
13 from the witness stand, that is the evidence. What the
14 lawyers say is not evidence.

15 I want you to listen to the evidence or lack of
16 evidence. I want you to have a critical mind and to ask
17 yourself: Why didn't I hear this? Why does this not
18 make sense? Why is this puzzle not complete? If there
19 are missing pieces of a puzzle and you don't have the
20 full picture in your mind, you have reasonable doubt,
21 your burden must be not guilty.

22 It is the Government's burden to prove to you
23 to get you this complete puzzle. It's not enough for
24 them to just try to connect the dots in the direction of
25 Mr. Davis. It's not enough for them to just try to

1 connect the dots and say, Well, it should have or could
2 you have and we think this is what it is. That's not
3 enough.

4 Beyond a reasonable doubt is a very high
5 standard. And I'll tell you this, they want you to
6 believe that Mr. Davis used a counterfeit access device
7 with intent to defraud. I want you to pay attention with
8 that part, with intent to defraud. You will hear the
9 jury instruction on what intent to defraud means. For
10 somebody to get property or money from somebody, and that
11 doesn't mean taking property as, Hey, I'm living at your
12 place for free, or I'm just living there, I'm paying
13 rent. It means, I'm taking your property or I'm taking
14 money from you, I'm defrauding you.

15 So I want you to listen to the evidence and
16 decide whether there was intent to defraud. I also want
17 you to be aware that the evidence will show that the
18 property manager who is going to testify, Jeff
19 Jean-Pierre, is only the property manager. They don't
20 collect rents. They are not the owner of the
21 condominium. The owner of the Unit 2004 was Marco
22 Chique, a Brazilian man who bought this place in February
23 of 2023. He turned around and rented the place in April
24 of 2023. He charged \$13,000 a month for rent. There is
25 absolutely no allegation that he is out of any money or

1 that the rent wasn't paid.

2 The Government wants you to believe that the
3 victim is this building, because they were defrauded
4 somehow. The only sole purpose of this building is to
5 decide who comes in to live there, who's good enough to
6 live there, who is not. That's the only purpose of them.

7 This is Alfred Davis. He's presumed innocent.
8 And I think the Government is going to have a very
9 difficult time to put these pieces of a puzzle together.
10 And I'm not going to go into details in the opening. I'm
11 going to let the Government present their evidence, and I
12 will speak to you in closing again.

13 I'm going to ask you to listen carefully about
14 what each witness has to stay. I want you to keep an
15 open mind. And I promise you that by the end of this
16 trial, you will find Mr. Davis not guilty of this crime.

17 Thank you.

18 THE COURT: Thank you, ma'am.

19 Please call your first witness.

20 MR. BAILYN: Thank you, your Honor. The
21 Government calls Jeff Jean-Pierre.

22 Your Honor, I have a binder with the trial
23 exhibits. May I present it to the Court?

24 THE COURT: Sure.

25 Please come forward, sir.

1 MR. BAILYN: Your Honor, can I put this in the
2 witness stand so I don't have to approach?

3 THE COURT: You may.

4 Madam clerk, please swear the witness.

5 Please remain standing and raise your right
6 hand.

7 (Witness duly sworn.)

8 THE COURT: Please be seated. Get as close to
9 the microphones as you can. Speak loudly. Tell us your
10 name and spell it.

11 THE WITNESS: My name is Jeff Jean-Pierre.

12 J-E-F-F --

13 THE COURT: Wait just a second. The
14 microphones, the thing you're talking into is a screen to
15 keep you from spitting on the microphone.

16 So talking into the screen isn't going to help.
17 It wasn't set up right. I apologize.

18 Please speak loudly, tell us your name and
19 spell it.

20 THE WITNESS: My name is Jeff Jean-Pierre.
21 First name is Jeff, J-E-F-F. Last name Jean-Pierre,
22 J-E-A-N, P-I-E-R-R-E.

23 THE COURT: You may proceed, sir.

24 JEFF JEAN-PIERRE,
25 called as a witness herein, having been first duly sworn,

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. BAILYN:

4 Q. Good afternoon, sir.

5 Will you tell us where you work?

6 A. I work at 400 Sunny Isles Boulevard.

7 Q. What's your role at 400 Sunny Isles?

8 A. I am the assistant property manager.

9 Q. What does that mean?

10 A. I manage the building. I'm below the property
11 manager.

12 Q. And how long have you been with 400 Sunny
13 Isles?

14 A. Since 2015.

15 Q. When was 400 Sunny Isles built?

16 A. In 2015.

17 Q. And what kind of building is it?

18 A. It's a condominium, high-rise condominium.

19 Q. Is it owned by a company? Is it owned by
20 individual owners?

21 A. It's owned by individual owners.

22 Q. So each unit is owned by an individual owner?

23 A. Yes.

24 Q. So what is your role? Do you work for the
25 owners? Do you work for the association?

1 A. I work for the association, basically the
2 owners.

3 Q. You have a binder with you.

4 Would you mind looking at Exhibit 14?

5 A. Okay.

6 Q. Do you recognize what you're looking at?

7 A. Yes.

8 Q. And what is it that you're looking at?

9 A. It is the 400 Sunny Isles building.

10 Q. Is that a fair and accurate description of how
11 400 Sunny Isles appeared in 2023?

12 A. Yes.

13 MR. BAILYN: Your Honor, I move to admit
14 Government Exhibit 14.

15 THE COURT: Any objection?

16 MS. BOZANIC: No objection.

17 THE COURT: Without objection, 14 is admitted
18 in evidence.

19 (Government Exhibit 14 received in evidence.)

20 THE COURT: I don't think that's straight. The
21 arm has to be straight for that thing -- pull it all the
22 way up. I think that's better. Okay.

23 MR. BAILYN: I'm used to computers, your Honor.
24 This is all new to me.

25 THE COURT: You can do it on the computer, if

1 you want.

2 MR. BAILYN: I'm having a little bit of a
3 technical difficulty, and I don't want to hold anything
4 up.

5 THE COURT: We lost it. You turned it off.

6 Okay. There you go. We lost the focus on it.
7 There you go.

8 MR. BAILYN: All right.

9 BY MR. BAILYN:

10 Q. So this is 400 Sunny Isles?

11 A. Yes.

12 Q. And this body of water, what body of water is
13 that?

14 A. Oh --

15 Q. I'm sorry. I'm not pointing at it.

16 Here. It's the bay?

17 A. Yes.

18 Q. All right. I want to ask you just about some
19 of the things that 400 Sunny Isles has.

20 So I see that it has a tennis court --

21 A. Yes.

22 Q. -- is that right?

23 A. That's correct.

24 Q. Now, is that open to anybody off the street
25 or is it limited?

1 A. It's limited only to the residents of 400 Sunny
2 Isles.

3 Q. I also see a swimming pool.

4 Is that a swimming pool?

5 A. Yes, that's a swimming pool.

6 Q. Same question.

7 Is that open to anybody who wants it or is it
8 limited?

9 A. It's limited to the residents of 400 Sunny
10 Isles only.

11 Q. What are some of the other amenities that 400
12 Sunny Isles has? For example, does it have a fitness
13 center?

14 A. Yes, we do.

15 Q. How about parking?

16 A. Yes, we have a parking garage.

17 Q. Valet services?

18 A. Valet services as well.

19 Q. Does it have package delivery?

20 A. Yes, we do.

21 Q. How about security, does it offer security?

22 A. Yes, we do.

23 Q. So I'd like to ask you just about the process
24 of someone becoming a resident at 400 Sunny Isles.

25 Can you take me through the steps that one

1 would go through before they can become an occupant or
2 resident?

3 A. Before you become an occupant of the building
4 400 Sunny Isles, they usually come to the building and
5 ask for an application. We ask them to fill it out. And
6 then we tell them they need to bring their ID, their
7 Social, the check -- money orders or check, whatever they
8 want to bring. And they have to bring the lease, the
9 leasing agreement between the owner and the tenant.

10 Q. So there is a separate agreement between the
11 owner of the unit and the tenant?

12 A. Yes.

13 Q. And I think you mentioned then the approval
14 process is separate then with the residents and then the
15 condominium association?

16 A. Yes, that is correct.

17 Q. And you work for the condominium association?

18 A. Yes.

19 Q. As part of this approval process, does the
20 applicant have to go through a background check?

21 A. Yes, the applicant go through a background
22 check.

23 Q. And what does that background check look for?

24 A. Financials, if they have a criminal history,
25 eviction. That's about it.

1 THE COURT: What do you mean by evictions?

2 THE WITNESS: Let's say they were evicted from
3 prior, other buildings.

4 THE COURT: Okay.

5 BY MR. BAILYN:

6 Q. What is the purpose of conducting a background
7 check for applicants?

8 A. The purpose of the background check for the
9 applicant is to -- is a requirement from the bylaws of
10 the building. Everybody has to go through that process.

11 Q. Well, let's say you do a background check for
12 someone, and it comes back without any spots. It's
13 clean.

14 What happens next?

15 A. We'll just go ahead and finish the application,
16 perhaps give the folder to the board members for them to
17 approve the application.

18 Q. What if the background check comes what back
19 with something? Let's say someone has an eviction
20 history or a criminal background or credit.

21 A. It depends on the criteria. If it's a small
22 eviction, it's been ten years, sometimes the board do
23 approve it. But if it's something that -- if it's not --
24 if it's recent, the board will take a look and ask for
25 more proof.

1 Q. So the information that comes back with the
2 background check is provided to the board?

3 A. Yes.

4 Q. They're the decisionmaker in the end?

5 A. Yes.

6 Q. Before performing a background check, do you
7 ask for someone's personal identifying information, which
8 is a long way of saying name, date of birth?

9 A. We do ask for the ID, and then they provide a
10 Social Security in the application and they sign on it.

11 Q. And why do you ask for someone's ID?

12 A. Just to match the Social Security and to do the
13 background check.

14 Q. Did the Government request documents from you
15 during this case?

16 A. Yes.

17 MR. BAILYN: Your Honor, the Government's filed
18 a notice of -- a 902.11 notice for Government Exhibits 1
19 through 8. We move to admit those at this point.

20 THE COURT: I have no idea what 902.11 is.

21 MR. BAILYN: Certification of domestic records.

22 THE COURT: Okay. Is there any objection to
23 the certification of these records?

24 MS. BOZANIC: Judge, there are relevance
25 objections on some of the exhibits. I'm not sure if

1 they're trying to introduce one by one.

2 THE COURT: But he's talking about
3 authenticity, I believe, at this point.

4 Are you not?

5 MS. BOZANIC: The authenticity, no.

6 MR. BAILYN: Your Honor --

7 THE COURT: I'm --

8 MR. BAILYN: -- I think they're all relevant,
9 but we don't have to --

10 THE COURT: Yeah, but we're not talking about
11 relevance at this point. We're talking about
12 authenticity.

13 Do you have an objection to authenticity?

14 MS. BOZANIC: No, your Honor.

15 THE COURT: Now, the relevance, talk to me
16 about the relevance.

17 What are we talking about.

18 MR. BAILYN: These are the property files for
19 Unit 903 and Unit 2004 that our witness collected from
20 the condominium association.

21 THE COURT: And what is the number?

22 MR. BAILYN: These are Exhibits 1 through 8.

23 MS. BOZANIC: Judge, I have specific objections
24 regarding some of the exhibits. Can we come sidebar?
25 There is a hearsay objection on one of them, and I would

1 like --

2 THE COURT: Tell me what your objections are
3 because I thought said at the original --

4 MS. BOZANIC: Judge, Exhibit Number --

5 THE COURT: All right. Hold on a second.

6 Ladies and Gentlemen of the Jury, if you will
7 go back into the jury room, let us talk about this in
8 open court.

9 I don't like it over here on the side. It gets
10 kind of confined.

11 COURT SECURITY OFFICER: All rise for the jury.

12 (Jury exits at 2:01 p.m.)

13 THE COURT: You may be seated.

14 Okay. Door is closed.

15 What is your -- First of all, ground rules. I
16 need you to present whatever exhibits you have to the
17 defense. You know, I have the benefit of being able to
18 talk to the jurors after the case, and the one thing they
19 get really annoyed about is the lawyers getting together
20 and whispering at each other and the judge sitting over
21 here and talking to them. They don't like that because
22 they think they're being left out.

23 MR. BAILYN: Your Honor, we provided the
24 defense all the exhibits and told them each specific Rule
25 of Evidence that we intended to introduce these exhibits

1 under.

2 THE COURT: Okay, but, you know, then the
3 defense has to tell us before, we're going to object to 1
4 through 8 because of this reason. Then we can deal with
5 it without the jury being -- we could have dealt with it
6 during the lunch break. So let's do that from now on,
7 wherever we can.

8 What is your objection to 1 through 8?

9 MS. BOZANIC: Judge, No. 5, Government's
10 Exhibit 5 has some checks. One of the checks has a
11 handwritten note and a scratch over it that says bounced.
12 That is not relevant. It's the third page of Exhibit 5.
13 It gives the appearance --

14 THE COURT: Third page of Exhibit 5. Hold on.
15 Let me find it.

16 Where does that bounced come from?

17 MR. BAILYN: As noted in the Government's
18 notice, these are the records from the property
19 association. That bounce is a handwritten annotation
20 because this check, indeed, bounced and an employee of
21 the property association wrote that in.

22 THE COURT: He's prepared to testify to that?

23 MR. BAILYN: He's provided a certification
24 that --

25 THE COURT: And this is the record with the

1 word bounced on it in their records?

2 MR. BAILYN: Yeah. These are -- all the
3 records that are encompassed by the Government's notice
4 that was filed at ECF No. 12.

5 THE COURT: Mr. Witness, do you know who put
6 the word bounced on there?

7 THE WITNESS: I can't recall.

8 THE COURT: Okay. Was it you?

9 THE WITNESS: I can't recall. I don't
10 remember.

11 THE COURT: Is this the way the record is in
12 your records, with this word on it?

13 THE WITNESS: Which exhibit was it?

14 THE COURT: Number 5, fourth page, or third and
15 fourth page, the one that says bounced on it.

16 THE WITNESS: That's not my handwriting.

17 THE COURT: Okay. The question was, is this
18 the way is record is in your records, with this word on
19 it? I didn't ask you if it was your writing.

20 THE WITNESS: Say it one more time.

21 THE COURT: Is this the way the record is in
22 the records of the association --

23 THE WITNESS: Yes.

24 THE COURT: -- with this word on it?

25 THE WITNESS: Yes.

1 THE COURT: Okay. I'll admit it over objection.

2 (Government's Exhibit 5 received in evidence.)

3 THE COURT: What else have you got?

4 MS. BOZANIC: Judge, No. 3, the Brown's
5 Background Checks, the two --

6 THE COURT: Exhibit 3?

7 MS. BOZANIC: Yes, your Honor.

8 THE COURT: What's the objection there?

9 MS. BOZANIC: If you go to the last two pages,
10 there are copies of the IDs, it makes it seem like these
11 IDs were presented with the background check.

12 I know I received it in the discovery. It
13 wasn't necessarily attached to the Brown's Background
14 Checks. I think they're two different exhibits, and I
15 think the Government -- it gives the appearance that
16 these were submitted somehow by my client or somebody
17 with the Brown's Background Check. They should be
18 separate exhibits.

19 MR. BAILYN: I don't understand the objection,
20 your Honor. The files were given to us. They were
21 scanned. These are individual pages.

22 THE COURT: This is the file that was given to
23 you?

24 MR. BAILYN: Yeah, 1 through 8 -- Yes, 1
25 through 8, your Honor. We broke them up into exhibits to

1 allow us to speak about individual packets of information
2 individually. If the defense wishes --

3 THE COURT: Are you saying that Exhibit 3 that
4 was given to you included these two items?

5 MR. BAILYN: Exhibits 1 through 8 included
6 these two items.

7 THE COURT: I didn't ask you that. I asked you
8 if Exhibit 3 included this item.

9 MR. BAILYN: So the Government was given a
10 batch of documents. Let's say it was 50 documents.

11 THE COURT: From whom?

12 MR. BAILYN: Exhibit 1 would be Pages 1 through
13 10. Exhibit 2 would be 10 through, let's say, 22. We
14 broke up the documents into individual exhibits to allow
15 it to be easier to discuss each exhibit with the witness.

16 If the defense wants, we can call these two
17 documents Exhibit 3A. We have no problem with that.

18 THE COURT: Were they together when you got
19 them? Where did you get them?

20 MR. BAILYN: We got them from the witness, your
21 Honor, in a scanned file.

22 THE COURT: This witness?

23 MR. BAILYN: Right.

24 THE COURT: You can cross-examine --
25 cross-examine him now and ask him where it came from. I

1 don't know. I mean, I'm not clairvoyant. I have no way
2 of knowing that.

3 MS. BOZANIC: Judge, I can tell you that in the
4 discovery that I received, they weren't next to each
5 other. There were other papers in between. What I'm
6 saying is that the Government put them together and made
7 them into one exhibit.

8 THE COURT: I'm giving you the opportunity to
9 cross-examine him --

10 MS. BOZANIC: Yes. May I proceed?

11 THE COURT: -- now, examine him now, and
12 determine what you're able to determine.

13 MS. BOZANIC: Thank you, your Honor.

14 May I go up to the lectern?

15 THE COURT: Of course.

16 CROSS-EXAMINATION

17 BY MS. BOZANIC:

18 Q. Mr. Jean-Pierre, do you have all the exhibits
19 in front of you?

20 THE COURT: Yes, he has the folder that has all
21 the exhibits.

22 BY MS. BOZANIC:

23 Q. Can you please turn to Exhibit No. 3?

24 A. I'm there.

25 Q. Okay. If you look at the Brown's Background

1 Check, do you specifically remember this document being
2 in the folders that you provided to the Government?

3 A. Which one exactly?

4 Q. That would be the Brown's Background Check, if
5 you look at the first page of Government's Exhibit 3, and
6 you keep going, do you recall this document being in the
7 documents that you provided to the Government?

8 THE COURT: Are we talking about the fifth or
9 sixth page? The one that has the picture of a driver's
10 license?

11 MS. BOZANIC: I'm talking about the first five
12 pages first, and then I'll get to Page 6 and 7.

13 THE COURT: Okay. Because there is nothing
14 Brown -- it says Brown's Background Checks.

15 MS. BOZANIC: Yes, your Honor.

16 THE COURT: You're not talking about the color
17 brown, you're talking about the name Brown's. Okay.

18 BY MS. BOZANIC:

19 Q. I was just naming the document. It's titled,
20 Brown's Background Check.

21 Do you see that?

22 A. Yes.

23 Q. Did you provide this to the Government?

24 A. Yes.

25 Q. Okay. And when you provided these documents,

1 were these two IDs there, Pages 6 and 7, attached to this
2 Brown's Background Check or were they somewhere randomly
3 in the package of many documents you provided to the
4 Government?

5 A. They were on the other side of the folder.

6 Q. Meaning they were not attached to the Brown's
7 Background Check, correct?

8 A. What exactly do you mean because this -- it was
9 one folder. The ID is on a different side, and the
10 background check is on a different side. It's right --

11 Q. So there were two separate folders?

12 A. No, no; one folder. It's right below each
13 other.

14 THE COURT: He said there was one folder and it
15 was in the same folder.

16 THE WITNESS: In the same folder.

17 BY MS. BOZANIC:

18 Q. What other documents did you have in that
19 folder? How many pages, approximately, would you have in
20 that folder?

21 A. There was a lot of pages. I can't recall.

22 Q. Okay.

23 A. About 40 to 50 pages in total.

24 Q. Okay. Can you tell this Court for sure that
25 these two driver's licenses were right next to the

1 Brown's Background Check or is it possible they were just
2 in those 50 pages?

3 A. They were -- they were on the same side as the
4 background check. Background check is on the top, and ID
5 should be at the bottom.

6 Q. And there were some documents in between,
7 correct?

8 A. It depends on who filed it. I can't recall.
9 But we usually put background check first and IDs at the
10 bottom, I believe.

11 Q. But can you tell us with specificity -- are you
12 sure that there were no documents in between these two?

13 THE COURT: I'm not sure -- What difference
14 does it make if there were documents in between? He is
15 saying that the background check was placed in one part
16 and that the IDs were placed at the bottom.

17 So what difference does it make if there were
18 other documents in between?

19 MS. BOZANIC: Judge, because there were, like,
20 let's say, 50 pages that were provided. This Brown's
21 Background Check didn't come with these two IDs. I think
22 it gives the appearance to the jury that these two IDs
23 were attached to the Brown's Background Check.

24 THE COURT: Well, I think you can communicate
25 that to the jury just the same way you have just done,

1 which is he doesn't know whether they were placed on the
2 front or placed in the back. I just don't know what
3 difference it makes.

4 MS. BOZANIC: Judge, I can tell you I got it in
5 the discovery. There were documents in between. It just
6 makes it seem -- like I said, I'm not going to go in
7 circles, but it just gives --

8 THE COURT: You know, I would assume that they
9 have some evidence that these photo IDs were used at some
10 point for the purpose of the background check, so I don't
11 think it matters whether they were in the front or in the
12 back or sideways. They were in the same folder. I just
13 don't understand the significance of it. Although I can
14 understand your wanting to make it significant, I don't
15 see the significance. And I don't think that that makes
16 it inadmissible. It is something that you can develop on
17 cross-examination.

18 MS. BOZANIC: Judge, the other thing I would
19 note is that Cynthia Louis' background check has the full
20 background check with the credit report, and it's about
21 four pages. And then there is only one page of Rod
22 Lesperance. There is also, in this 2003, no proof that
23 he signed anything saying that it was okay to run his
24 background check.

25 THE COURT: So what?

1 MS. BOZANIC: So the fact that these two IDs
2 are on the back of this background check gives it the
3 appearance that somehow my client provided this to
4 somebody and had this ran --

5 THE COURT: Isn't that what this trial is all
6 about, that he provided these IDs? And if they can't say
7 that he provided the IDs, don't you win? I mean, they
8 have to have somebody say he provided these IDs for the
9 purpose of the background check; don't they?

10 MS. BOZANIC: Judge, that's fine. I'll just
11 cross-examine on the issue when it comes up.

12 Thank you.

13 THE COURT: Yeah, okay.

14 All right. At this point, I'll overrule your
15 objection.

16 MR. BAILYN: Your Honor, we would then ask to
17 introduce Government Exhibits 1 through 8.

18 THE COURT: 1 through 8 are admitted over
19 objection. Please bring the jury back in and I'll offer
20 it again in front of the jury.

21 (Government Exhibits 1-8 received in evidence.)

22 COURT SECURITY OFFICER: All rise for the jury.

23 (Jury enters at 2:13 p.m.)

24 THE COURT: Please proceed.

25 DIRECT EXAMINATION

1 || (Resumed)

2 || BY MR. BAILYN:

3 Q. Mr. Jean-Pierre, when we were last speaking I
4 was asking you about the process of the background check.
5 And I asked if the condominium association required that
6 a person provide a driver's license.

7 || A. Yes.

8 || q. Why do they ask for that?

A. To match the person face with the ...

10 THE COURT: Actually, he said they had to
11 provide identification. I don't think he said a driver's
12 license.

13 MR. BAILYN: I'm sorry. Identification.

14 || BY MR. BAILYN:

15 Q. The condominium association requires somebody
16 to provide identification?

17 || A. Yes.

o. What types of identification?

19 A. ID or passport.

20 || Q. And why do they ask for that?

21 A. To make sure the person -- that is the person
22 they say they are.

23 Q. Is it a regular course or practice to then keep
24 a copy of that driver's license that's provided?

25 A. Yes.

1 Q. And where is that copy kept?

2 A. In a folder in the office with all the
3 background checks and everything, application and
4 everything together.

5 Q. So how are the folders organized in the office?

6 Is it by unit? Is it by date?

7 A. By unit.

8 Q. Were you asked to provide folders or files to
9 the Government in this case?

10 A. Yes.

11 Q. And was that for particular units?

12 A. Yes.

13 Q. And which units were those?

14 A. 2004 and 903.

15 Q. Okay. Do you know someone who goes by the name
16 of Rod Lesperance?

17 A. Yes.

18 Q. And how do you know him?

19 A. He came to the building to drop off an
20 application.

21 Q. When was that?

22 A. 2018.

23 Q. How did you come to learn that his name was Rod
24 Lesperance?

25 A. When they came to drop off the application.

1 Q. Did he introduce himself to you as Rod
2 Lesperance?

3 A. I don't recall, but I believe he came and --

4 MS. BOZANIC: Objection; hearsay.

5 MR. BAILYN: It's a statement by the --

6 THE COURT: I don't believe that it's hearsay.

7 There are a lot of --

8 MS. BOZANIC: And no personal knowledge.

9 THE COURT: Their allegation is that it's the
10 same person that's sitting next to you, so that would not
11 be hearsay.

12 MS. BOZANIC: Judge, the objection, no personal
13 knowledge. He was about to speculate, I believe.

14 THE COURT: Yeah, I don't want you guessing.
15 If you don't know, you don't know.

16 Did he introduce himself to you as Rod
17 Lesperance, whatever the name is?

18 BY MR. BAILYN:

19 Q. The application that you mentioned, which unit
20 was that for?

21 A. 903.

22 Q. And you provided documents for Unit 903 to the
23 Government? You had said that earlier?

24 A. Yes.

25 Q. I'd like to show you some of those.

1 MR. BAILYN: One moment, your Honor.

2 Your Honor, is there a way to pull it up
3 without breaking it?

4 THE COURT: You better not break it. I don't
5 think your budget is big enough to break it.

6 MR. BAILYN: I do not doubt that.

7 THE COURT: What is it you're trying to do?

8 MR. BAILYN: I'm just trying to zoom out a
9 little bit so that we can --

10 THE COURT: You can zoom out without lifting it
11 up.

12 MR. BAILYN: We won't see the whole document,
13 though.

14 THE COURT: It zooms.

15 MR. BAILYN: I know. I zoomed up, I just
16 wanted to be able to see the whole document. If I can
17 maybe move it up a little bit, if that's doable.

18 THE COURT: Probably should have done that
19 before the trial started.

20 MR. BAILYN: Your Honor, I usually rely on my
21 computer, but you know what, we're going to wing it.

22 THE COURT: Do it on your computer then.

23 MR. BAILYN: I'm having a problem, your Honor.
24 BY MR. BAILYN:

25 Q. I'm going to start with the top of this

1 document. It's dated October 19, 2018. It says 400
2 Sunny Isles.

3 What is this document?

4 A. I don't see anything.

5 MR. BAILYN: Your Honor, can the witness be
6 shown what -- this is Government Exhibit 6.

7 THE COURT: Look at the screen.

8 THE WITNESS: I see it now.

9 THE COURT: It's being shown to him. He's just
10 not looking at the screen.

11 BY MR. BAILYN:

12 Q. Can you explain to the jury what this document
13 is?

14 A. This is approval letter.

15 Q. What is this approval for?

16 A. For Unit 903.

17 Q. How do you know it's for Unit 903?

18 A. Because it says 400 Sunny Isles Boulevard, Unit
19 903.

20 Q. I think your screen is touch screen.

21 Do you mind circling where it says 903?

22 A. (Witness complies.)

23 Q. Do you recognize the signatures on this page?

24 A. Yes.

25 THE COURT: That's a lousy circle.

1 THE WITNESS: Sorry.

2 BY MR. BAILYN:

3 Q. Is there an arrow in circle function?

4 THE COURT: You just have to go around and it
5 will circle it.

6 THE WITNESS: Is that better?

7 THE COURT: Okay.

8 BY MR. BAILYN:

9 Q. It's better. I think it gets the point.

10 Do you recognize any of the signatures on that
11 page?

12 A. I recognize my signature.

13 Q. Where is your signature?

14 A. The witness.

15 Q. Do you mind just pointing that out?

16 A. (Witness complies.)

17 Q. Before this approval was done, before you
18 signed this approval, would you have requested a
19 background check?

20 A. Yes.

21 Q. And I see that the name here is Rod Lesperance.
22 Would you have requested a background check for
23 Rod Lesperance?

24 A. Yes.

25 Q. Before you do a background check on someone, do

1 they have to authorize the use of their information?

2 A. Yes.

3 THE COURT: Are all of your screens working?

4 Let me know if any of them go out, which happens fairly
5 often.

6 BY MR. BAILYN:

7 Q. I'm showing you -- I'm continuing with
8 Government Exhibit 6. It says, Authorization to release
9 Brown's Background Checks.

10 Who would have filled out this authorization?

11 A. The applicant.

12 Q. That's not your handwriting?

13 A. No.

14 Q. Date of birth.

15 Who would have filled that out?

16 A. The applicant.

17 Q. As well as the Social Security number?

18 A. Yes.

19 Q. All right. You provided us the file for Unit
20 903.

21 Would a copy of the driver's license provided
22 before doing this background check been included in that
23 file?

24 A. Yes.

25 THE COURT: What is the yellow paper on there?

1 MR. BAILYN: This is the way it was received by
2 the Government, your Honor, so we didn't want to alter
3 anything.

4 THE COURT: What's that yellow paper? What's
5 that yellow paper on there?

6 THE WITNESS: It's basically add-on paper, add-
7 on application.

8 THE COURT: Okay. Add-on paper, meaning what?
9 Additional paper for what, for the application?

10 THE WITNESS: Yes.

11 THE COURT: Okay. It just didn't make any
12 sense. I didn't understand what it meant.

13 All right. Go ahead. Move on.

14 BY MR. BAILYN:

15 Q. Showing you a driver's license. This is the
16 document that was included in Unit 903?

17 A. Yes.

18 Q. I will zoom in.

19 What is the name on this driver's license?

20 A. Rod Lesperance.

21 Q. And the date of birth?

22 A. 12/04/1975.

23 Q. Okay. Was a background check run on Rod
24 Lesperance in 2018?

25 A. Yes.

1 Q. All right. And continuing to show you
2 Government's Exhibit 6, can you describe for us what that
3 document is?

4 A. This is a background check from Brown's
5 Background Checks.

6 THE COURT: Keep your voice up, please.

7 THE WITNESS: Okay.

8 BY MR. BAILYN:

9 Q. Does this background check document indicate
10 when the background check was run?

11 A. Yes.

12 Q. And when was that?

13 A. 10/19/2018.

14 Q. Okay. I'd like to go through, just quickly --
15 I see the subject Rod Lesperance.

16 What does that mean in these background checks?

17 A. That is the name of the applicant.

18 Q. And the date of birth?

19 A. 12/04/1975.

20 Q. The first thing we see is -- excuse me --
21 Scoring and then Credit Summary Form.

22 Do you do background checks for credit reports?

23 A. Yes.

24 Q. On the next page we see: Evictions nationwide,
25 no evictions nationwide found.

1 Was this background check done for evictions as
2 well?

3 A. Yes.

4 Q. And then I see Search on name Lesperance for
5 comprehensive criminal search.

6 Was a criminal background check done?

7 A. Yes.

8 Q. What were the results of that criminal
9 background check?

10 A. It says, No criminal background check found.

11 Q. I'm showing you a driver's license, yet again.

12 Looking at that picture, do you recognize the
13 person in that picture>, not here, but do you recognize
14 him from 2018?

15 A. Yes.

16 Q. That's somebody you met in person?

17 A. Yes.

18 Q. And what did he call himself?

19 A. Rod Lesperance.

20 Q. How long have you known this person as Rod
21 Lesperance?

22 A. The day he dropped the application off, 2018.

23 Q. When did you find out that he may have a
24 different name?

25 A. This year, I believe, or last year. I don't

1 recall.

2 Q. What was the context in which you learned that
3 he may have a different name?

4 A. Because an FBI agent came and told us.

5 MS. BOZANIC: Objection; hearsay.

6 THE COURT: I'll sustain the objection. That
7 is hearsay.

8 BY MR. BAILYN:

9 Q. Was it in the context of an investigation?

10 A. Say it one more time.

11 Q. It's fine. We'll leave it.

12 I asked you about Unit 903. Now I want to ask
13 you about Unit 2004.

14 THE COURT: I don't like to keep the jury in
15 the dark. I'm sure you have heard hearsay many times on
16 television. Probably once or twice it was actually right
17 what they said. Hearsay is an out-of-court statement
18 being repeated in court. And the reason it doesn't
19 usually come in is because you have no chance to
20 cross-examine to see if the man's seeing eye dog had been
21 left at home, or if he was legally blind or if he was
22 looking into the sun or something like that. So you
23 don't have a chance to test his statement if he's not the
24 person saying it.

25 On the other hand, there are some indicia of

1 reliability. This doesn't happen to have them. But
2 testimony at a former trial, the admission of a party
3 opponent, statement against interest, spontaneous
4 statement, excited utterance, records of past
5 recollections, business records, those are all exceptions
6 because there is a reason that those are probably more
7 believable and that just a regular out-of-court
8 statement. So this doesn't happen to fit into any of
9 those categories, so I did not admit it. It's not a big
10 mumbo-jumbo or a big complicated thing. It's just an
11 out-of-court statement being introduced into court for
12 its truth.

13 You may proceed.

14 MR. BAILYN: Thank you, your Honor.

15 THE COURT: It's a free evidence lesson to the
16 jury.

17 BY MR. BAILYN:

18 Q. Beyond Unit 903, did the person who you knew as
19 Rod Lesperance attempt to live in another unit at 400
20 Sunny Isles?

21 A. Yes.

22 Q. What unit was that?

23 A. 2004.

24 Q. Did you provide to the Government the property
25 file for Unit 2004?

1 A. Yes.

2 Q. I'd like to show you what's been admitted as
3 Government Exhibit 1. In your binder, would you mind
4 going to the second page of Government Exhibit 1.

5 You mentioned to us that the process is that a
6 person would lease an apartment from an owner, and then
7 would get approval from the condominium association; is
8 that right?

9 A. That's correct.

10 Q. Does the condominium association that you work
11 for keep or review a copy of that lease?

12 A. Yes.

13 Q. All right. So I'm showing you what's been
14 marked as Government Exhibit 1. This is the second page.
15 It says: Residential lease for apartment.

16 The condominium -- excuse me. The condominium
17 association, as I mentioned, keeps a copy of the lease?

18 A. Yes.

19 Q. And who is the lessee for this unit?

20 A. Cynthia Louis.

21 Q. And where do we see that?

22 A. Right here (indicating).

23 Q. And what is the unit number that's being
24 leased?

25 A. 2004.

1 THE COURT: Can I ask you to circle her name
2 with your finger because I want to see if this is not
3 working. I want to get it fixed.

4 Have you circled it?

5 THE WITNESS: I did.

6 THE COURT: So it's not working. Okay. So
7 we'll just have to go with the arrows. Please get that
8 fixed, Iris. I don't mean right now. I mean overnight.

9 MR. BAILYN: May I continue, your Honor?

10 THE COURT: You may proceed.

11 BY MR. BAILYN:

12 Q. Cynthia Louis is the lessee for Unit 2004?

13 A. Yes.

14 Q. Showing you what's been marked as Government's
15 Exhibit 4, you can pull -- you can see it on the screen
16 or you can look at it in your binder. It says 400 Sunny
17 Isles at the top.

18 Is this document a document for the individual
19 owner or is it a document that's for the condominium
20 association?

21 A. For the building.

22 Q. And for which unit is this document related to?

23 A. 2004.

24 Q. We see that here; is that right?

25 A. Yes.

1 Q. I'll show you the next page. It says:

2 Occupancy, Rod Lesperance and Cynthia Louis.

3 What does that mean, occupancy?

4 A. They are going to be the tenant of the unit.

5 Q. I'm sorry. What was that?

6 A. They're going to be tenant of that unit.

7 They're going to be living in that unit, 2004.

8 Q. Okay. Before somebody is added as a tenant for
9 a unit, do they have to go through a background check?

10 A. Yes.

11 Q. Did you have a discussion with the person you
12 knew to be Rod Lesperance about the need to go through a
13 background check?

14 A. Um.

15 Q. Let me ask the question differently then.

16 A. Okay.

17 Q. Before Rod Lesperance becoming an occupant, did
18 you talk to him?

19 A. Yes.

20 Q. What did you talk to him about?

21 A. That he would need to redo the application to
22 be a tenant in the building again.

23 Q. The person that you recognize as Rod
24 Lesperance, you told him that he needed to redo the
25 application?

1 A. Yes.

2 Q. Showing you what's been marked as Government
3 Exhibit 2, this is dated April 17, 2023. This looks
4 similar to another document.

5 But would you mind explaining to us what this
6 document is?

7 A. This is a -- the letter of approval.

8 Q. And who is approval granted to?

9 A. Cynthia Louis and Rod Lesperance.

10 Q. Before this approval, there would have been a
11 background check done?

12 A. Yes.

13 Q. Now, before doing a background check, would
14 someone request identification?

15 A. Yes, someone would request identification.

16 Q. Is that identification kept in the file?

17 A. Yes.

18 Q. I show you Government Exhibit 3.

19 Is this a photocopy of identification that was
20 kept in the file?

21 A. Yes.

22 Q. And who is this identification for?

23 A. It says Cynthia Louis.

24 Q. Is that one of the people who was approved?

25 A. Yes.

1 Q. Okay. I'm showing you another document.

2 Is this a photocopy of a driver's license that
3 was kept in the file?

4 A. Yes.

5 Q. And who is this for?

6 A. For Rod Lesperance.

7 Q. And the date of birth, if you can see it? I
8 can turn it sideways.

9 A. 12/04/1975.

10 Q. Okay. I want to ask you something about this
11 document. I notice on the side here it says: Mail
12 Yadalyn Monteste, Outlook.

13 Can you explain what that means?

14 A. This document came from an email.

15 Q. Do you know who Yadalyn Monteste is?

16 A. Yes.

17 Q. Who is she?

18 A. She was the front desk lead of 400 Sunny Isles.

19 THE COURT REPORTER: She was the --

20 THE COURT: She was the what?

21 THE WITNESS: Front desk lead of 400 Sunny
22 Isles.

23 BY MR. BAILYN:

24 Q. Was she an employee of the same organization
25 that you are --

1 A. Yes.

2 Q. -- an employee of?

3 Does he she work at 400 Sunny Isles anymore?

4 A. She no longer work there.

5 Q. Okay. Finally, I show you what was in the
6 file. This is, again, Brown's Background Check.

7 What was the date that this background check
8 was requested?

9 A. 4/13/2023.

10 Q. What was the name?

11 A. It say Rod Lesperance.

12 Q. I see -- you were not the one who requested
13 this background check -- excuse me.

14 Were you the one who requested this background
15 check?

16 A. No.

17 Q. It says Rob Lesperance and we have seen this ID
18 that says Rod Lesperance. I think you mentioned that you
19 knew the defendant as Rod Lesperance.

20 Do you know why it says Rob Lesperance here?

21 A. I believe it would be a typo.

22 Q. Either way, was there a criminal search done?

23 A. Yes.

24 Q. Based on this background check, though, was an
25 eviction report done?

1 A. No.

2 Q. How about a credit history?

3 A. No.

4 Q. What is the only thing that was searched for in
5 this background check?

6 A. Criminal, sex offender, nationwide and
7 international.

8 Q. And did this come back clean?

9 A. Yes.

10 MR. BAILYN: Okay. A moment, your Honor, to
11 confer with my partner.

12 THE COURT: Go right ahead.

13 BY MR. BAILYN:

14 Q. So after this background check was done -- I
15 want to ask a question.

16 Just looking at this driver's license, is this
17 Cynthia Louis, the lessee?

18 A. Say it one more time.

19 Q. You mentioned this was Cynthia Louis, the name
20 on the lease?

21 A. Yes.

22 Q. How often are you at Unit 2004 -- excuse me, at
23 400 Sunny Isles?

24 A. How often I am -- all the time, Monday through
25 Friday.

1 Q. Have you ever seen this woman before?

2 A. No.

3 Q. Okay. Now, let's assume that someone had
4 provided a fraudulent driver's license.

5 Would that be a cause for the condominium
6 association to take action?

7 MS. BOZANIC: Objection; speculation.

8 THE COURT: I'll permit this. Overrule the
9 objection.

10 THE WITNESS: Repeat the question.

11 BY MR. BAILYN:

12 Q. If someone -- based on your experience and as
13 the assistant property manager, if someone had provided a
14 fraudulent driver's license, for example, is that a
15 reason for the condominium association to take action,
16 such as eviction?

17 A. It depends. If we realize it's a fraudulent
18 ID, we would not accept the application.

19 Q. Have there been any eviction proceedings that
20 have begun in this case?

21 MS. BOZANIC: Objection; relevance.

22 THE COURT: Overruled.

23 THE WITNESS: No.

24 BY MR. BAILYN:

25 Q. Do you know why not?

1 A. I'm not quite sure.

2 Q. Is that decision made by you or the condominium
3 association above?

4 A. That would be the condominium association.

5 MR. BAILYN: Thank you.

6 No further questions, your Honor.

7 THE COURT: Cross-examination.

8 MS. BOZANIC: Thank you, your Honor.

9 Judge, I'm just looking for the actual evidence
10 that was introduced so I can show the jury the copies --

11 THE COURT: Okay.

12 MS. BOZANIC: -- if I can have a moment.

13 MR. BAILYN: We introduced Exhibits 1 through 8.

14 MR. DOMINGUEZ: It's not that. You have to
15 give her the actual exhibits. Give her the exhibits.

16 CROSS-EXAMINATION

17 BY MS. BOZANIC:

18 Q. Good afternoon, Mr. Jean-Pierre.

19 A. Good afternoon.

20 Q. You testified today about Rod Lesperance,
21 R-O-D, correct?

22 A. R-O-D?

23 Q. Yes, Rod Lesperance.

24 A. R-O-D, like dog, yes.

25 Q. Did you also refer to the same person as Rob on

1 numerous occasions?

2 A. That's what I was reading.

3 Q. So did you -- is the answer yes? Did you refer
4 to this person as Rob, R-O-B?

5 A. From what I was reading, yes.

6 Q. I'm talking about different occasions before
7 today.

8 Did you think this person's name was Rob?

9 A. Repeat the question again.

10 Q. Before today, did you refer to this person as
11 Rob, R-O-B?

12 A. No.

13 Q. Do you remember speaking to my investigator and
14 calling this person Rob and not Rod?

15 A. Pronunciation, I would say that, yes.

16 Q. Okay. Prior to the Government speaking to you
17 about this case, did you even know this person's last
18 name or did you just know him as Rob?

19 A. Rod Lesperance, because I did the background
20 check.

21 Q. Now, you did the background check on the 2018,
22 correct?

23 A. Yes.

24 Q. And you can't tell the jury that you ever
25 received any driver's license from Mr. Davis here,

1 correct?

2 A. Say it one more time.

3 Q. You, yourself, never received a copy of a
4 driver's license? It wasn't handed to you by Mr. Davis,
5 correct?

6 A. I received a driver's license from Rod
7 Lesperance.

8 Q. In which year?

9 A. 2018.

10 Q. In 2023, you were not present and you have no
11 idea how this driver's license got there, correct?

12 MR. BAILYN: Objection; compound, your Honor.

13 THE COURT: It is compound.

14 MS. BOZANIC: I'll rephrase, Judge.

15 BY MS. BOZANIC:

16 Q. In 2023 --

17 A. Okay.

18 Q. -- you did not receive a copy of the driver's
19 license in the name of Rod Lesperance, correct?

20 A. 2023 you said?

21 Q. Yes.

22 A. I was not doing -- running -- doing the
23 application.

24 Q. I'm going to show you Government's Exhibit 3,
25 part of the Exhibit 3.

1 I'm zooming out so you can see the whole
2 document. So Government's Exhibit 3, which is the
3 driver's license of Rod Lesperance, shows that it came
4 from an Outlook mail of Yadalyn Monteste, correct?

5 A. Yes.

6 Q. You have no idea how she got that, correct?

7 A. From the Outlook mail.

8 Q. Okay. But you were not present and you can't
9 testify to the jury how this person, Yadalyn Monteste,
10 got this ID and who provided it to her, correct?

11 A. Correct.

12 Q. Okay. You cannot testify as to whether a
13 realtor dropped it off or somebody else emailed it,
14 correct?

15 A. I can't recall, no.

16 Q. Did the Government ask you to try to help him
17 finds Yadalyn Monteste when they spoke to you about this
18 case?

19 A. Say it one more time.

20 Q. Did the Government ever ask you to help them
21 find Yadalyn Monteste when they spoke to you about this
22 case?

23 A. No.

24 Q. Now, you are just a property manager, or you
25 just work for the property manager's office, correct?

1 A. Yes.

2 Q. You don't collect rent?

3 A. No.

4 Q. You have nothing to do with collecting any type
5 of money on behalf of the owner of this condominium,
6 correct?

7 A. No.

8 Q. You mentioned something about seeing certain
9 tenants or you spoke specifically about Cynthia Louis and
10 the fact that you never saw her, correct?

11 A. Yes.

12 Q. Do you see every single person that comes in
13 and out from all these condominiums in this big building?

14 A. Yes.

15 Q. You see every single person?

16 A. Yes.

17 Q. Do you know every single person by their name?

18 A. Not quite sure, no.

19 Q. Do you know who Marco Chique?

20 A. Yes.

21 Q. Who is Marco Chique?

22 A. The owner of the unit.

23 Q. Of Unit two thousand --

24 A. Four.

25 Q. -- four, correct?

1 A. Yes.

2 Q. And Marco Chique bought the unit in February of
3 2023, correct?

4 A. That's correct.

5 Q. Okay. And he bought it under the name of a
6 company called Miami 2023 at 400 Sunny Isles, LLC, right?

7 A. That's correct.

8 Q. And that company, even though it has the name
9 of 400 -- it has the word 400 Sunny Isles in its name,
10 has nothing to do with your property management, correct?

11 A. No.

12 Q. And you know that this is the person who
13 collects rent for the unit, right?

14 A. I would not know that.

15 Q. Okay. Let me rephrase it.

16 You, as the property manager, have nothing to
17 do with collection of the rent?

18 A. That's correct.

19 Q. Because you don't own the unit?

20 A. Yeah.

21 Q. Let's talk about Government's Exhibit 6 that
22 was shown to you earlier. This is the certificate of
23 approval from 2018.

24 A. Yes.

25 Q. And you said your signature is the one as the

1 witness?

2 A. Yes.

3 Q. Why is this document not notarized?

4 A. Why is it not notarized? It was an add-on, and
5 usually add-on we don't notarize it since it's an add-on.

6 Q. Okay. Now let me show you something else, also
7 part of Exhibit 6, Government's Exhibit 6. There is an
8 application for authorization to release, and then we
9 can't see the rest of it, but it's basically -- Can you
10 tell me what this paper is?

11 A. This is add-on paper, add-on application,
12 basically.

13 Q. What is this whole document, authorization to
14 release what?

15 A. To release their information.

16 Q. And for somebody to have their background
17 checked, they have to sign an authorization saying, Go
18 ahead and run a background, correct?

19 A. Yes.

20 Q. And in this case, you're saying Rod Lesperance
21 signed it?

22 A. Yes.

23 Q. Right?

24 A. Yes.

25 Q. But you didn't watch him sign this, correct?

1 A. They just -- they usually just drop off the
2 application. They don't --

3 Q. Okay.

4 A. -- sign it in front of us.

5 Q. Can you, with specificity, tell us who dropped
6 off the application in 2018, whether it was a realtor or
7 somebody else?

8 A. This was add-on, so I believe he dropped it
9 off.

10 Q. You believe.

11 Can you tell this jury for sure that you know
12 who dropped off this application in 2018, five years ago?

13 A. Five years ago I won't remember, so that's why
14 I said he probably dropped it off because it was an
15 add-on to the --

16 Q. I don't want you to speculate and tell me
17 probably. I am asking you: Do you know.

18 A. I don't recall.

19 Q. Now, if there's a typo in the background check
20 such as Rob Lesperance.

21 Obviously, that would affect the search,
22 correct?

23 MR. BAILYN: Objection; foundation.

24 THE COURT: I don't know. If he knows he can
25 answer.

1 BY MS. BOZANIC:

2 Q. Do you want me to repeat the question?

3 A. Yes, please.

4 Q. If there's a typo in the name that somebody
5 inputs when they run the background check, such as Rob as
6 opposed to Rod, there will be a big difference, right?
7 The search would be different.

8 A. It depends.

9 Q. What does it depend on?

10 A. If we do have a Social and the name is wrong,
11 the background check company will tell us the name was
12 wrong. But if there was no Social, it will come out
13 different.

14 Q. Now, in 2018, the background check for Rob
15 Lesperance was ran and it included the evictions and the
16 credit report and the background check, correct?

17 A. Yes.

18 Q. And in 2023, it was only the background check,
19 right?

20 A. Yes.

21 Q. Who decides what's run, if it's the whole
22 thing, all three, or just the background check?

23 A. Who decide?

24 Q. Yes.

25 A. We don't decide.

1 Q. So can you explain why in 2023 there is only a
2 background check ran as opposed to the whole credit
3 report and evictions?

4 A. Which exhibit is it?

5 Q. I am just talking generally speaking when you
6 run a background check.

7 A. No, I'm saying, which exhibit is the page --

8 Q. I'm sorry?

9 A. -- for the background check?

10 Q. I wasn't asking about a specific exhibit. I
11 was saying when you run a background check, who decides
12 whether you run all three or just one?

13 A. We don't decide.

14 Q. I'm sorry?

15 A. We don't decide.

16 Q. Okay. So in 2000- -- now I'm going to go to --
17 I think it was Exhibit 3, which is a 2023 background
18 check.

19 Do you have that in front of you?

20 A. (No response.)

21 Q. And I'm going to show it to you if you want to
22 look at your screen, if that's easier.

23 So Exhibit No. 3 --

24 A. Yes.

25 Q. -- has the full background check for Cynthia

1 Louis?

2 A. Yes.

3 Q. Which has credit cards, credit lines, evictions
4 and everything.

5 Why is it that Rob Lesperance -- in this case
6 Rob Lesperance only has the background check for the
7 criminal history?

8 A. Because no Social Security was provided.

9 Q. So the 9999 means there was no Social Security
10 provided?

11 A. Yes.

12 Q. I'm going to show you Exhibit 1.

13 Do you know who Monica Rivera is?

14 A. No.

15 Q. Have you ever seen Monica Rivera?

16 A. I don't recall.

17 Q. This lease is between Cynthia Louis in 2023 at
18 400 Sunny Isles, LLC.

19 Can you tell the jury what this 2023 at 400
20 Sunny Isles, LLC, represents?

21 A. That is the name of the company that owns unit
22 2004.

23 Q. Is that the same company that's owned by Marco
24 Chique?

25 A. I believe so, yes.

1 Q. I'm going to show you Exhibit No. 2, which is,
2 again, the approval in 2023.

3 Did you witness any of these or is your
4 signature on any of these?

5 A. No.

6 Q. So do you know who approved this lease?

7 A. The approval name is there, Sadegh Nadimi.

8 Q. Do you know who that is?

9 A. Yes.

10 Q. Who is that?

11 A. A board member.

12 Q. I'm going to focus on the 2023 lease.

13 A. Okay.

14 Q. You're not able to tell the jury who brought
15 this ID to the office, correct, or how the office has the
16 ID in their records?

17 A. Repeat again.

18 Q. The 2023 lease, the lease that happened in
19 April of 2023, Unit 2004 --

20 A. Okay.

21 Q. -- right?

22 You're not able to tell this jury who brought
23 in this ID and how it ended up in your office, correct?

24 A. No. It was just --

25 Q. You have no personal knowledge as to who gave

1 this --

2 THE COURT: Don't interrupt him. He was still
3 talking.

4 MS. BOZANIC: I'm sorry?

5 THE COURT: Do not interrupt him. He was still
6 taking.

7 MS. BOZANIC: Yes, your Honor.

8 BY MS. BOZANIC:

9 Q. I'm sorry. Go ahead.

10 A. This was dropped off with the application.

11 Q. You have no personal knowledge and you cannot
12 tell the jury who dropped this off, correct?

13 A. The applicant.

14 Q. I'm sorry?

15 A. The applicant would be the one dropping it off.

16 Q. Are you presuming this or did you actually see
17 him with your own eyes?

18 A. The applicant is the one that drop it off.

19 Q. Okay. You just testified earlier that you
20 didn't see who dropped this off and that it was e-mailed
21 somehow, correct?

22 A. I am saying the applicant is the one that would
23 be dropping it off.

24 Q. I'm not asking you what always happens, sir.

25 I'm asking you: Did you see Al Davis drop this

1 off on April 13, 2023? Did you see him with your own
2 eyes?

3 A. I see -- this is confusing right now.

4 You're telling me a different name, so which
5 name are you talking about?

6 Q. Okay. So did you see anybody drop off this ID
7 on April 13, 2023?

8 A. This ID was mailed from Outlook.

9 Q. Okay. So do you know -- was it mailed to your
10 Outlook?

11 A. Not my Outlook.

12 Q. Because it was mailed to the Outlook, you
13 cannot tell the jury who mailed it, who dropped it off or
14 who provided it, correct?

15 A. That's correct, yes.

16 MS. BOZANIC: All right. Just a moment, your
17 Honor.

18 No further questions. Thank you.

19 THE COURT: Redirect.

20 If you don't have any more exhibits, use the
21 Lectern.

22 MR. BAILYN: Thank you, your Honor.

23 REDIRECT EXAMINATION

24 BY MR. BAILYN:

25 Q. Mr. Jean-Pierre, before April 2023 when this

1 background check was run, did you see the person that the
2 defense refers to as Alfred Davis in 400 Sunny Isles?

3 A. Who are we talking about?

4 Q. Let me rephrase it.

5 Before the background check was run in April of
6 2023, did you see the person that you refer to as Rod
7 Lesperance in 400 Sunny Isles?

8 A. Yes.

9 Q. How often did you see him?

10 A. Probably once or twice. It depends -- I was
11 always in the office. I was not at the front desk, so I
12 only saw him once or twice.

13 Q. You're not the only employee at 400 Sunny
14 Isles; is that right?

15 A. There are multiple employees.

16 Q. All right. What did you start as before
17 becoming an assistant property manager?

18 MS. BOZANIC: Objection; beyond the scope.

19 THE COURT: I don't believe it is at this point
20 yet.

21 BY MR. BAILYN:

22 Q. What did you start as before becoming an
23 assistant property manager?

24 A. I was a receiving clerk in 2015, and I became
25 front desk in 2016, went back to front desk lead in 2017,

1 20- -- front desk lead 2017 to 2019, and then I became
2 the assistant property manager.

3 Q. So what was your position in 2018 during the
4 first background check?

5 A. I was the front desk lead.

6 Q. Is that -- the front desk lead, the person who
7 would do the background check approval?

8 A. Yes.

9 Q. Now, in 2023 you were asked whether or not you
10 did the background check.

11 In 2023, were you a front desk lead?

12 A. No.

13 Q. What were you?

14 A. I was the assistant property manager.

15 Q. So whose responsibility was it to do the
16 background checks?

17 A. The front desk lead.

18 Q. And who was the front desk lead in 2023?

19 A. Her name was Yadalyn Monteste.

20 Q. Okay. Does the front desk lead, after doing a
21 background check, keep the copies of the driver's
22 licenses in the files?

23 A. Yes.

24 Q. Great. Let me just ask about the background
25 check process and typing things in.

1 How exactly do you do the background check?

2 MS. BOZANIC: Objection; beyond the scope.

3 THE COURT: Overruled.

4 THE WITNESS: How do I?

5 BY MR. BAILYN:

6 Q. Yeah. Do you call it in? Do you type it in?

7 A. We type it in.

8 Q. Type it into what?

9 A. To computer on our software base.

10 Q. And who do you use to conduct background checks?

11 A. Brown's Background Checks.

12 Q. Who decides whether somebody's approved as a
13 resident?

14 A. The board members.

15 MR. BAILYN: One moment, your Honor.

16 BY MR. BAILYN:

17 Q. Let me just ask this.

18 The person you know as Rod Lesperance, where
19 did he live in 2023?

20 A. Where?

21 Q. Yes.

22 A. In Unit 2004.

23 MR. BAILYN: No further questions, your Honor.

24 THE COURT: Thank you, sir. You are excused.

25 (Witness excused.)

THE COURT: Please call your next witness.

2 MS. SADLO: Your Honor, the United States calls
3 Jason Brown.

4 THE COURT: Very well.

5 Do any of you need a break? If you do, I'll
6 have one; otherwise, we can wait until after this
7 witness.

8 There's a little bit of a ramp there.

9 Please remain standing. When you reach the
10 chair, raise your right hand, this way.

11 MR. DOMINGUEZ: Judge, this will be my witness,
12 so I'll be doing the objections, with the Court's
13 pleasure.

14 THE COURT: Well, whoever makes the objection,
15 it's their witness.

16 || (Witness duly sworn.)

17 THE COURT: Please be seated. Get as close to
18 the microphones as you can. Speak loudly. Tell us your
19 name and spell it.

20 THE WITNESS: My name is Jason, J-A-S-O-N, last
21 name Brown. B-R-O-W-N.

22 THE COURT: You may proceed, ma'am.

23 || MS. SADLO: Thank you, your Honor.

24 || JASON BROWN .

25 || called as a witness herein, having been first duly sworn,

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MS. SADLO:

4 Q. Mr. Brown, what do you do for living?

5 A. I own a number of rental properties, and I also
6 own a background check company called Brown's Background
7 Checks.

8 Q. How long have you been operating Brown's
9 Background Checks?

10 A. About eight, nine years, but I used to own
11 another background check company for another eight or
12 nine years.

13 Q. How long in total have you worked in the
14 background check industry?

15 A. About 18 years.

16 Q. At Brown's Background Checks, who are typically
17 your customers?

18 A. I almost exclusively do condominiums and HOAs.

19 Q. What categories of information -- or what
20 categories of background checks do you run for
21 condominium associations?

22 A. The condominiums have an option of running
23 three different background checks. One is a criminal
24 background check, which covers the whole United States,
25 and it covers misdemeanors, traffic, and felonies. Then

1 they have the option of choosing an evictions report,
2 which is both evictions filed and evictions completed.
3 And then the third part is a credit report with a FICO
4 score. FICO is the credit score. There are actually
5 five different credit scoring system, and FICO is the
6 oldest and most respected credit scoring system.

7 Q. Who decides which of those categories is used
8 for a background check?

9 A. It's normally the board of directors which sets
10 the requirements for the association, and then the
11 management office carries it out.

12 Q. You mentioned three different types of
13 background checks, right, criminal history, evictions,
14 and credit history?

15 A. Correct.

16 Q. Let's go through those one at a time, first,
17 with credit history.

18 What type of information is submitted to your
19 company when someone wants to run a credit history check?

20 A. So, in order to run a credit report, you have
21 to have a signed consent form from an applicant. That
22 consent form has to have on it the person's name, date of
23 birth, address, and it has to be an American address, and
24 their full Social Security number.

25 Q. What information do you need from your customer

1 at the condominium association to run an eviction check?

2 A. An eviction check is their name and Social
3 Security number.

4 Q. And finally, what information do you need to
5 run a background check -- a criminal history?

6 A. The criminal report is name and date of birth.

7 Q. Do you also need an authorization form for a
8 criminal history check?

9 A. You do not.

10 Q. Let's go over the process for actually running
11 the background check.

12 A. Okay.

13 Q. After a customer decides they want to run a
14 background check, what's the first step they do to
15 communicate that they want a check done to you?

16 A. Well, we do not deal with any customers
17 whatsoever. We only deal with our -- our customer is the
18 association. So the association's management office
19 speaks with the prospective future occupants. So the
20 occupant could be a renter, a guest, or a new owner.

21 They would communicate with the management
22 office. The management office would indicate what their
23 requirements are for that association. And then they
24 would collect the information from the possible future
25 resident. Then the office logs into our system through

1 the internet with their user name and password, chooses
2 the report they want to do, and types in the information
3 that is needed to run that report.

4 Q. So let's take each of that piece by piece,
5 starting with the system.

6 Does each customer have an individual way to
7 log into that system?

8 A. Each client, each association has their own
9 user name and password and their own account, yes.

10 Q. Once they've logged in using their account, you
11 said they then select the type of background check they
12 want?

13 A. Correct.

14 Q. Is that the credit history, eviction, or
15 criminal history categories we were just discussing?

16 A. Exactly. And then the system, based on what
17 they've selected, will require the data that's required
18 for that report or those reports.

19 Q. Let's focus on a criminal history background
20 check.

21 You mentioned before they have to give a name
22 and date of birth?

23 A. Correct.

24 Q. What source do you use to check that
25 individual's background?

1 A. A long time ago, people used to have to figure
2 out where people had lived and then check the courthouses
3 in those areas. Today, with the advent of computers, we
4 deal with one data provider in California, and that data
5 provider compiles all the information from the whole
6 United States from all the courthouses. There's
7 somewhere over 36,000 courthouses in the United States.

8 So that data provider does the work for us.
9 And we send the request to them, they check it, and then
10 they send the report back to us.

11 Q. Do you know how that database in California
12 communicates with all those counties across the country?

13 A. So I'm not a programmer, but I know that each
14 courthouse, because there's 36,000 of them, uses
15 different systems. So they are constantly working on
16 their system to communicate with those courthouses. And
17 they have to be changing that all the time. It would be
18 physically impossible for an individual company to do
19 that without outside help, like myself. I could never do
20 it.

21 Q. Once that California database communicates with
22 the counties nationwide, what type of information do they
23 receive back?

24 A. They receive the misdemeanors, felonies, and
25 traffic violations, and then they transport them back to

1 me -- transmit them.

2 Q. How do you know that that California database
3 has completed its search? Do they return a report to
4 you?

5 A. Yes.

6 Q. What do you do when you receive that report?

7 A. If the report has things that it has found, we
8 review the report. One of our staff will look at it and
9 review it. If nothing has been found and the person is
10 clean, then the report is immediately sent back to the
11 client.

12 Q. And you mentioned that some of your clients are
13 condominium associations.

14 Has 400 Sunny Isles ever been one of your
15 clients?

16 A. I have been doing the background checks there
17 since the building was built.

18 Q. Do you know approximately when the building was
19 built?

20 A. Maybe ten years ago.

21 Q. Have you reviewed copies of the background
22 checks that your company has ran for 400 Sunny Isles?

23 A. Yes.

24 Q. I'm showing you what's already admitted as
25 Government Exhibit 3. We're going to go to Page 5 of

1 Exhibit 3.

2 Are you able to see that?

3 A. Yes.

4 Q. What is Page 5 of Exhibit 3?

5 A. Page 5 is a criminal-only report, and on that
6 report, the person -- no information was found that they
7 had conducted any criminal offenses. So that's why the
8 message was at the bottom, that all the different things
9 that they checked came up clean.

10 Q. What was the date that this background check
11 was requested?

12 A. If you see in the top-right corner, it was
13 requested on 4/13/2023. And it was completed on
14 4/13/2023.

15 Q. I think you might have just said this, but to
16 be clear, what type of background check is shown on
17 Page 5 of Exhibit 3?

18 A. This is a comprehensive criminal report.

19 Q. What information would have needed to be
20 submitted to run this comprehensive criminal report?

21 A. If you look at the center of the report, you
22 see the person's name. It's actually last name, then
23 first name. You see an address, but it was not
24 necessary, and then you see a date of birth on the right.
25 And where the Social Security number would have gone, you

1 see the Xs and the 9s. A Social Security was not
2 provided for it, or, if it was provided to the management
3 office, the management office did not type it into the
4 system.

5 Q. What was the name of the individual whose
6 background check was researched in Page 5 of Exhibit 3?

7 A. This particular one, the name is in the center
8 of the page. First name is Rob, R-O-B. Last name, I
9 can't say it -- L-E-S-P-E-R-A-N-C-E.

10 Q. Who would have typed that information in so
11 that it could be used on the background check?

12 A. The employee in the management office.

13 Q. I'm now going to show you Page 7 of Exhibit 3.
14 Do you see the name on the driver's license
15 shown on Page 7?

16 A. Yes.

17 Q. What is the first name on the driver's license?

18 A. The first name is Rod, R-O-D.

19 Q. That's one letter off from the name that was
20 ran on the background check; is that right?

21 A. Correct.

22 Q. Does the system you use have any sort of
23 intelligence that can check for similar names?

24 A. It actually does. It has an extensive amount
25 of intelligence if the names are similar. Unfortunately,

1 that one probably would not be -- that would probably be
2 in two different categories of names.

3 Q. Where it says "comprehensive criminal search,"
4 does that mean that this background check would have used
5 that California database and checked all those counties
6 across the country, like you just described earlier?

7 A. A hundred percent.

8 Q. What is the purpose of -- we just reviewed a
9 driver's license.

10 And based on your experience in condominium
11 associations and working with 400 Sunny Isles, what is
12 the purpose of a condominium association receiving a
13 driver's license before they run a background check?

14 A. The purpose of them receiving the driver's
15 license is to ascertain that the applicant is telling the
16 truth.

17 Q. I'm showing you what's already been admitted as
18 Government's Exhibit 6. We're going to go to Page 4.

19 What is Page 4 of Government's 6?

20 A. Page 4 is a credit report.

21 Q. What is the date -- Excuse me.

22 I'm now showing you Page 5 of Government's
23 Exhibit 6.

24 A. Okay.

25 Q. What is this page?

1 A. So at the very top is a Social Security number
2 trace. A Social Security number trace tells you the
3 Social Security number that's been submitted. It tells
4 you where it's been used, where somebody was employed,
5 and that Social Security taxes were paid through their
6 payroll. And that's how you can figure out where people
7 have lived in the past. The next part is the evictions
8 report, and it shows that there's no evictions. And then
9 the bottom is the criminal report, and it shows there's
10 no criminal.

11 Q. Would the Social trace evictions and criminal
12 report have all been a part of this same package for this
13 credit history?

14 A. This particular building picks everything.
15 They do the full package, which is very common in south
16 Florida.

17 Q. What is the date of the background check in
18 Government's Exhibit 6?

19 A. 10/19/2018.

20 Q. And would this background check that you --
21 that checked the criminal history again, also have used
22 that same database in California and across the country
23 you described before?

24 A. Yes.

25 Q. What were the results of the criminal history

1 check in Government's Exhibit 6?

2 A. It came back with nothing, clear.

3 Q. In your experience, why do condominium
4 associations care about background checks?

5 A. So it's multifaceted. One, when you're living
6 in a high-end building and you were screened and you run
7 into somebody in the elevator and you become friends with
8 them, you have the assumption that they also were
9 screened on the same level as you and that they are not a
10 danger to you.

11 Second, after 2008, when the whole area
12 crashed, real estate-wise, we had so many people, it
13 turned out, that had falsified --

14 MR. DOMINGUEZ: Your Honor, objection; this is
15 way off field, honestly.

16 THE COURT: I don't understand the point
17 either.

18 What's going on here?

19 MS. SADLO: I am just asking in his experience
20 as a person who runs background checks and worked at
21 condominium associations, what the purpose of a
22 background check is.

23 THE COURT: What does it matter?

24 MS. SADLO: Just for the context of the
25 information.

1 THE COURT: Move on.

2 MS. SADLO: Yes, your Honor.

3 || May I have a moment to confer?

4 || THE COURT: Pardon me?

5 MS. SADLO: May I have a moment to confer?

6 || THE COURT: Yes.

7 MS. SADLO: No further questions, your Honor.

8 THE COURT: All right. Cross?

9 MR. DOMINGUEZ: Thank you, your Honor, may I
10 approach?

11 THE COURT: You may.

CROSS-EXAMINATION

13 || BY MR. DOMINGUEZ:

14 || o. Good afternoon, Mr. Brown.

15 || A. Hello.

16 || 8. Hello

17 THE COURT: If you have exhibits you can sit
18 there, but otherwise, use the lectern.

19 || MR. DOMINGUEZ: Oh, I'm sorry, yeah.

20 || BY MR. DOMINGUEZ:

21 Q. Now, most of what you testified to here is just
22 general knowledge regarding the industry; is that
23 correct?

24 A. A hundred percent.

25 ||| 9. It's not that you have any personal knowledge

1 regarding this case itself?

2 A. I do not.

3 Q. All right. Nor do you have any information
4 regarding who took any of the information that was
5 provided to your service, correct?

6 A. That is correct.

7 Q. You have basically a system that works through
8 a computer and an internet type service, correct?

9 A. A hundred percent.

10 Q. And the company you referred to in California,
11 what's the name of that company?

12 A. I do not recall off the top of my head.

13 Q. Have you ever been there?

14 A. No.

15 Q. Do you know where it's located physically?
16 Have you seen it?

17 A. No.

18 Q. You just are testifying that, generally, you
19 believe it's located in California?

20 A. Yeah, I know the address. If I had my invoice
21 with me, I could tell you. I pay them a lot of money.

22 Q. But you have never been to the place? You
23 don't know where it is?

24 A. No.

25 Q. And your company is a local company, correct?

1 A. Correct.

2 Q. And you work for local buildings in the area,
3 correct?

4 A. Close to 500 of them.

5 Q. And you have this system set up that's very
6 convenient for them to plug in the information.

7 Do you do the training, by the way, for the
8 associate to put the information in?

9 A. Yes -- oh, you mean on-site?

10 Q. On-site, yeah.

11 A. The system is ridiculously easy, does not
12 require much training, but I personally visit every one
13 of my clients about every two or three years.

14 Q. But do you know at each building who is
15 inputting the information?

16 A. Not 100 percent, no, but it's somebody in the
17 management office.

18 Q. Right, but it could be somebody new, could be
19 brand new?

20 A. Oh, there is a lot of turnover in a
21 condominium, yes.

22 Q. In this particular case, you have no idea how
23 accurate the information was that was provided, correct?

24 A. A hundred percent. It is the responsibility of
25 the management office to ascertain the accuracy through a

1 driver's license or any other means that they can.

2 Q. And you rely on them blindly, correct?

3 A. Yes.

4 Q. You don't have a choice?

5 A. No.

6 Q. So if somebody wants to fudge with the system,
7 it's on them, correct?

8 A. Correct.

9 Q. Now, if you put a name in and it's off by a
10 letter or so, as you were shown in Exhibit 3, that's
11 going to throw off the search, correct?

12 A. It probably will. Sometimes it will still find
13 the information on the person.

14 Q. But if you don't have the Social and you have a
15 letter off, computers are very picky --

16 A. Without a doubt.

17 Q. -- it's going to spit back, okay, nothing
18 found?

19 A. Correct.

20 Q. Because it's a matter of precision when you're
21 putting in this type of information, correct?

22 A. Yes.

23 THE COURT: It might spit back that he's an ax
24 murderer? It goes either way; couldn't it?

25 It could go either way; couldn't it?

1 THE WITNESS: Well, you would have had to made
2 up the name of the exact ax murderer with the date of
3 birth.

4 THE COURT: That's what I'm saying. You don't
5 know what it could come back as.

6 THE WITNESS: But when it comes back, then we
7 review it.

8 THE COURT: Okay.

9 THE WITNESS: And then if a serious crime
10 comes back, we normally do call the building and discuss
11 it. And sometimes, I've even called the applicant
12 directly, if it's serious.

13 BY MR. DOMINGUEZ:

14 Q. It's more likely you're going to get a false
15 positive than a false negative? In other words, when a
16 letter is off --

17 MS. SADLO: Objection, your Honor; compound.

18 THE COURT: That is all right. Let him ask the
19 question first.

20 BY MR. DOMINGUEZ:

21 Q. What's more likely to happen?

22 A. Unclear.

23 Q. No record found, correct?

24 A. Correct, yes.

25 Q. Now, if you got somebody that comes back ax

1 murderer, then you look into it because that obviously
2 could be a mistake?

3 A. We stop the report, and then we call the office
4 and then -- yeah.

5 Q. But when no record comes back no record found,
6 the inquiry ends there?

7 || A. Exactly.

8 MS. BOZANIC: Thank you, sir. I have no
9 further questions.

10 THE COURT: Any redirect?

11 MS. SADLO: One moment, your Honor, please.

REDIRECT EXAMINATION

13 || BY MS. SADLO:

14 Q. Mr. Brown, we heard some questions about the
15 database in California.

16 How long have you been using the system that
17 uses the California database?

18 A. As long as I have owned the company, eight
19 years, nine years.

20 Q. And when you receive your invoices from that
21 California database, you said that address is listed on
22 there?

23 || A. Yes.

MS. SADLO: No further questions, your Honor.

THE COURT: Thank you, sir. You are excused.

1 THE WITNESS: Thank you.

2 (Witness excused.)

3 THE COURT: Let's take a 10-minute break --

4 I'll tell you what, we'll break until 3:30. Folks, go on
5 in, use the restroom if you wish, drink water, whatever
6 you want, but go fast so that we can...

7 COURT SECURITY OFFICER: All rise.

8 (Jury exits at 3:15 p.m.)

9 THE COURT: We'll be in recess until 3:30.

10 (Court recessed from 3:15 until 3:30 p.m.)

11 (Jury enters at 3:31 p.m.)

12 THE COURT: Please call your next witness.

13 MR. DOMINGUEZ: We're missing an AUSA.

14 MS. SADLO: Yes, your Honor, our next witness
15 will be Special Agent Weisenstine, but before he takes
16 the stand, as we did with the first witness, we have a
17 few pieces of evidence that we would like to move in.
18 There was also notices of authenticity filed, and I just
19 spoke to the defense counsel and they said that they
20 don't have any objection to the authenticity of these
21 exhibits.

22 THE COURT: Okay.

23 MS. SADLO: And I will let them speak for
24 themselves, but my understanding is that there is only a
25 remaining objection for the two convictions that we

1 discussed before.

2 THE COURT: All right. And I already ruled on
3 those; didn't I?

4 MS. SADLO: Yes. I just wanted to be clear.

5 MR. DOMINGUEZ: And we renew them at this time,
6 Judge.

7 THE COURT: All right. I renew my rulings.

8 MS. SADLO: At this time, your Honor, the
9 United States enters into evidence Government's Exhibits 9
10 through 13, and 15.

11 THE COURT: 9 through 13 and 15 are admitted.

12 Which of them are the ones that I am admitting
13 over objection.

14 MS. SADLO: So, Your Honor, 13 is one of the
15 ones that are being admitted over objection.

16 THE COURT: All right, 13, over objection.

17 MS. SADLO: And 15.

18 THE COURT: And what else?

19 MS. SADLO: 15.

20 THE COURT: And 15 over objection, I have
21 admitted.

22 (Government Exhibits 9 through 13 were received
23 in evidence.)

24 (Government Exhibit 15 was received in evidence.)

25 THE COURT: All right. Go.

1 MS. SADLO: The United States calls Special
2 Agent Joe Weisenstine to the stand.

3 THE COURT: Very well. Please come forward,
4 sir, watch your step. There's a little ramp there.

5 (Witness duly sworn.)

6 THE WITNESS: I do.

7 THE COURT: Please be seated. Get as close to
8 the microphone as you can, tell us your name and spell
9 it.

10 THE WITNESS: My name is Adam Joseph
11 Weisenstine. Spelling of the last name is
12 W-E-I-S-E-N-S-T-I-N-E.

13 THE COURT: All right. That's fine.
14 You may proceed.

15 MS. SADLO: Thank you, your Honor.

16 ADAM JOSEPH WEISENSTINE,
17 called as a witness herein, having been first duly sworn,
18 was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MS. SADLO:

21 Q. Good morning, Mr. Weisenstine.

22 A. What do you do for work?

23 Q. I am a special agent with the FBI.

24 Q. How long have you been a special agent with the
25 FBI?

1 A. Over four years.

2 Q. What did you do before becoming a special agent
3 for the FBI?

4 A. I was in the United States Army.

5 Q. What are your duties and responsibilities as a
6 special agent?

7 A. I investigate financial crimes.

8 Q. While doing your duties and responsibilities,
9 have you ever investigated an individual named Alfred
10 Davis?

11 A. I have.

12 Q. During your investigation, did you ever try to
13 locate Alfred Davis?

14 A. Yes.

15 Q. What steps did you take to locate Alfred Davis?

16 A. I reviewed financial records associated with
17 Alfred Davis.

18 Q. What types of financial records did you review?

19 A. Bank statements for a personal account.

20 Q. Did you ever review any checks that you could
21 find in the bank statements?

22 A. Yes. Those are commonly returned within bank
23 records for us.

24 Q. I am showing you what's been already admitted
25 as Government's Exhibit 8.

1 Are you able to see that?

2 A. Yes.

3 Q. What is Government's Exhibit 8?

4 A. This is a check from a Navy Federal Credit
5 Union account, it's titled, Alfred L. Davis, and there's
6 a -- it's made out to Miami 2023 at 400 Sunny Isles, LLC,
7 and it has a memo line stating, 400 Sunny Isles, Unit 2004.

8 Q. Is this where you're reading from the memo line
9 here?

10 A. Yes.

11 Q. Is this check one of those records that helped
12 you locate Alfred Davis?

13 A. Yes.

14 Q. What did you do after finding this record?

15 A. From reviewing the record and from other
16 investigations, that's typically indicative of an
17 address. So I started a review if there's anything
18 associated with that address, such as on Google Maps, and
19 there appeared to be a condominium association down in
20 400 Sunny Isles.

21 Q. Once you determined that 400 Sunny Isles was a
22 condominium, what did you do next for your investigation?

23 A. I requested a subpoena for records from the
24 United States Attorney's Office to get records associated
25 with that unit.

1 Q. And what unit are you referring to?

2 A. 2004.

3 Q. What records did you request in the subpoena?

4 A. Records associated with the current occupants
5 of that unit.

6 Q. How was that subpoena served?

7 A. I went down with another agent and we went to
8 the 400 Sunny Isles condominium and we went in person
9 with that subpoena.

10 Q. Who did you encounter when you went to serve
11 the subpoena at 400 Sunny Isles?

12 A. I spoke with Jeff Jean-Pierre, who was here
13 earlier today.

14 Q. When you served the subpoena on Jeff
15 Jean-Pierre, did he show you the records you requested?

16 A. Yes.

17 Q. What were the types of records that he showed
18 you?

19 A. It was many of the records shown here today,
20 but it was records associated with the current occupants,
21 including driver's license, release forms and other
22 records. It was a multitude.

23 Q. I believe you mentioned driver's license.

24 Do you remember the names of the individuals
25 whose driver's licenses you were shown?

1 A. Yes, there were two driver's licenses. One for
2 Cynthia Louis and then the other was for a Rod
3 Lesperance.

4 Q. I'm showing you what has been previously
5 admitted as Government's 3, Page 7.

6 Is this the driver's license that you saw when
7 you went to 400 Sunny Isles to serve the subpoena?

8 A. Yes.

9 Q. How did seeing this driver's license affect
10 your investigation, if at all?

11 A. I recognized the photo as Alfred Davis, and so
12 we wanted to dig more into the validity of that driver's
13 license.

14 Q. How did you look into the validity of that
15 driver's license?

16 A. We have access to DMV records as law
17 enforcement, so we were able to check the list of
18 driver's license number, the one that would begin with L
19 on that page, and we can query that in the DMV records
20 system to see what that returns.

21 Q. Did you also request additional records from
22 400 Sunny Isles?

23 A. Yes.

24 Q. What categories of documents did you receive
25 from 400 Sunny Isles?

1 A. Background check information. There was data
2 sheets where someone, the applicant or occupants would
3 fill out certain information.

4 Q. Did you also review a lease agreement?

5 A. Yes.

6 Q. I'm showing you Page 2 of what has been
7 admitted as Government's Exhibit 1.

8 What is Page 2 of Government's Exhibit 1?

9 A. This is a residential lease for apartment or
10 unit for the 400 Sunny Isles, Unit 2004.

11 Q. So who is listed as the tenant of Unit 2004?

12 A. Cynthia Louis.

13 Q. Did you also review -- You said you reviewed
14 the background check information for Unit 2004 as well?

15 A. I did.

16 Q. I'm showing you Page 9 of Government's Exhibit
17 4.

18 What is Page 4 -- or, excuse me, what is Page 9
19 of Government's Exhibit 4?

20 A. This is the authorization to release
21 information for Brown's Background Check.

22 Q. Who is this background check for?

23 A. Cynthia Louis.

24 Q. On the next page, on Page 10 of the
25 authorization form, what does the form say is the maiden

1 name of Cynthia Louis?

2 A. Stuckey, E-Y at the end.

3 Q. During your investigation, did you ever look
4 into a potential relationship between Cynthia Louis or
5 Cynthia Stuckey and the defendant, Alfred Davis?

6 A. Yes.

7 Q. How did you look into that relationship?

8 A. I reviewed records associated with Alfred
9 Davis's birth certificate, or actually I reviewed his
10 birth certificate.

11 Q. Did you receive a certified copy of that birth
12 certificate?

13 A. I did.

14 Q. I'm now showing you what's been admitted as
15 Government's Exhibit 12.

16 What is Government's Exhibit 12?

17 A. This is a birth certificate for Alfred Lenoris
18 Davis.

19 Q. Who is listed as the mother on the birth
20 certificate?

21 A. Cynthia Denise Stuckey.

22 Q. You already said the name of the child is
23 Alfred Lenoris Davis.

24 What is the date of birth on the birth
25 certificate?

1 A. Date of birth is January 17, 1974.

2 Q. Now, we just discussed the background check
3 documents that were submitted for Cynthia Louis.

4 Did you review the background check documents
5 for the other occupant of Unit 2004?

6 A. Yes.

7 Q. Was that Rod Lesperance?

8 A. Yes.

9 Q. Did you review the driver's license that was in
10 the file for 400 Sunny Isles?

11 A. Yes.

12 Q. Is this the same license that you saw when you
13 went to serve the subpoena for Jeff?

14 A. Yes.

15 Q. Mr. Jean-Pierre, excuse me.

16 You mentioned earlier that you requested
17 driving records related to the information on this
18 driver's license.

19 What information specifically did you use to
20 search for those driver's records?

21 A. So we started off with searching the driver's
22 license number. Touching the screen, so at the top on
23 the license, you can see where it starts with L210. So
24 we were able to search that in our access to DMV records.

25 Q. I know we're referring to then as driver's

1 records.

2 Are those records from the Florida Highway
3 Safety and Motor Vehicles?

4 A. Yes.

5 Q. Did you receive those driver records for that
6 driver's license number?

7 A. Yes.

8 Q. I'm showing you what's been admitted as
9 Government's Exhibit 10. I'm going to slide up to the
10 top.

11 What is Exhibit 10?

12 A. So these are return records from FLHSMV
13 pertaining to that specific driver's license number for
14 the Rod Lesperance driver's license that was provided to
15 400 Sunny Isles.

16 Q. I know the circle function isn't working right
17 now, but can you please describe -- I have now zoomed in
18 on Government's Exhibit 10.

19 Can you please describe where you see the
20 driver's license number on this official record?

21 A. On the left side, kind of a third of the way
22 down, it will say DL/ID number.

23 Q. Is where I'm pointing my finger the place that
24 you're referring to?

25 A. Yes.

1 Q. What is the name of the individual whose
2 driver's license number that is?

3 A. Just below that number, you can see it, it says
4 Aaron James Lukoff.

5 Q. And what is the date of birth for Mr. Lukoff?

6 A. Middle of the page or middle of the screen you
7 can see it. It says date of birth, 12/4/1975.

8 Q. I'm going to put side by side Government's
9 Exhibit 3 and Government's Exhibit 10. It's a little
10 hard to see.

11 Are you able to see both the license and the
12 information that came back on the official record?

13 A. Yes.

14 Q. How does the driver's license number on the ID
15 that was used for Rod Lesperance compare to the driver's
16 license number from Mr. Lukoff, from Florida Highway
17 Safety and Motor Vehicles?

18 A. They are the same driver's license number.

19 Q. How does the date of birth on the license used
20 for Rod Lesperance compare to the date of birth for the
21 official record for that driver's license number from
22 Mr. Lukoff?

23 A. They are the same date of birth.

24 Q. When you requested official records from
25 Florida Highway Safety and Motor Vehicles for this

1 driver's license number that's on this license, did you
2 receive any records for Rod Lesperance?

3 A. No.

4 Q. Did you receive any records for an Alfred
5 Davis?

6 A. Yes.

7 Q. When you search this driver's license number?

8 A. Oh, I'm sorry. No, I -- that was for a
9 separate query. I'm sorry.

10 No, for that driver's license number I did not
11 receive any information for Alfred Davis.

12 Q. Did you later search for the driver's license
13 number for Alfred Davis?

14 A. Yes.

15 Q. Are those the records that you were just
16 referring to?

17 A. Yes.

18 Q. It's safe to say you received those records
19 from --

20 A. Yes.

21 Q. -- Florida Highway and Motor Safety?

22 I'm showing you what has been admitted as
23 Government's Exhibit 9.

24 What is Government's Exhibit 9, and just so you
25 can see the sticker right there?

1 A. This is records returned from FLHSMV for Alfred
2 Lenoris Davis.

3 Q. I've now zoomed in.

4 Can you please describe where on the screen you
5 see the driver's license number for Alfred Davis?

6 A. It's on the left side, kind of the middle of
7 the way down.

8 Q. Is this where you're reading from, where I'm
9 pointing now?

10 A. Yes.

11 Q. Just like we did for the last driver's license
12 record, I'm now going to put side by side Government's
13 Exhibit 9 with Page 7 of Government's Exhibit 3.

14 On the right we have the driver's license --
15 excuse me, Exhibit 3, and on the left we have
16 Government's Exhibit 9.

17 How do the driver's license numbers for Alfred
18 Davis' driver's record compare to the license number on
19 the license that was submitted?

20 A. They're different numbers.

21 Q. How do the date of births on Mr. Davis's
22 official record compare to the date of birth on the
23 license that was submitted?

24 A. They're different.

25 Q. During your investigation, did you also review

1 materials that were submitted for a background check for
2 a Unit 903?

3 A. Yes.

4 Q. Do you remember the name of the individuals
5 whose background check you reviewed?

6 A. Rod Lesperance.

7 Q. Was an ID submitted for the 2018 background
8 check?

9 A. Yes.

10 Q. I'm showing you Page 7 of Government's Exhibit 6.
11 Is this the driver's license number you
12 received from 400 Sunny Isles?

13 A. Yes.

14 Q. I'm going to put side by side with Government's
15 Exhibit 6, the driver's -- Government's Exhibit 10.

16 Are you able to see both sets of information?

17 A. Yes.

18 Q. And, for the record, Government's Exhibit 10 is
19 on the left and Government's Exhibit 6 is on the right.

20 How does the driver's license number for
21 Mr. Lukoff in Exhibit 10 compare to the driver's license
22 number in the license that was submitted in 2018?

23 A. They match.

24 Q. How does the date of birth of Mr. Lukoff in the
25 official record compare to the date of birth on the

1 license submitted in 2018?

2 A. They match.

3 Q. You mentioned previously that when you went to
4 serve the subpoena at 400 Sunny Isles and Jeff showed you
5 the photos -- and we showed you that driver's license for
6 Rod Lesperance -- that you recognized that photo.

7 Was that your testimony?

8 A. Yes.

9 Q. How did you recognize the photo?

10 A. I have been investigating Alfred --

11 MR. DOMINGUEZ: Objection, your Honor. This is
12 the third time we've objected to this.

13 THE COURT: I will permit him to say he was
14 investigating him. I don't want him to say what for, but
15 investigating, I don't think that's prejudicial in any
16 particular way.

17 Go ahead. You were investigating --

18 MS. SADLO: I can ask a more narrow question,
19 your Honor, as well, to abide by that.

20 BY MS. SADLO:

21 Q. As part of your duties as a special agent, you
22 mentioned prior that you had been investigating someone
23 named Alfred Davis; is that right?

24 A. Correct.

25 Q. During that investigation, did you ever see the

1 individual Alfred Davis?

2 A. Yes.

3 Q. Had you seen Alfred Davis before you served the
4 subpoena at 400 Sunny Isles?

5 A. Not in person, no.

6 Q. Have you seen a photo of Alfred Davis before
7 you went to 400 Sunny Isles?

8 A. Yes.

9 Q. What was your basis for recognizing the photo
10 on the ID for Rod Lesperance?

11 A. I noticed the eyes.

12 Q. Now, you said you hadn't met Alfred Davis in
13 person before you saw that ID?

14 A. Correct.

15 Q. Did you later see Alfred Davis in person?

16 A. Yes.

17 Q. Could you please describe the -- what the
18 facial features of the Alfred Davis that you saw before
19 here today?

20 A. Yes. I was in an elevator with Mr. Davis and
21 another individual. Mr. Davis had a beard and much
22 shorter hair than he has today, but we were relatively
23 close in an elevator together.

24 Q. We have talked a lot about background checks
25 today.

1 Does the FBI also have the ability to run
2 background checks?

3 A. Yes.

4 Q. Did you run a background check in this case on
5 Mr. Davis?

6 A. Yes.

7 Q. What were the results of your background check
8 that you ran on Alfred Davis?

9 A. The results returned that there was a state
10 felony conviction as well as a federal felony conviction.

11 Q. How do you know that there was a state felony
12 conviction?

13 A. We obtained certified records from the Broward
14 County courthouse.

15 Q. I'm now showing you what has been marked as
16 Government's Exhibit 15.

17 MR. DOMINGUEZ: We renew our objections to
18 these exhibits, your Honor.

19 THE COURT: I renew my ruling. Permitted,
20 again, not for the purpose if he did it once, he could do
21 it again or anything like that. It's for other purposes.

22 You may proceed.

23 MS. SADLO: Yes, your Honor.

24 BY MS. SADLO:

25 Q. And just so we can all see, it's Government's

1 Exhibit -- the tag on the bottom, what is Government's
2 Exhibit 15?

3 A. This is a certified judgment from the Broward
4 County courthouse regarding defendant, Alfred Davis, and
5 conviction for a felony crime.

6 Q. How do you know that it was for a felony crime?

7 A. If you look in the bottom right of the screen,
8 there is a felony stamp on there.

9 Q. Are you referring to this stamp here
10 (indicating)?

11 A. Yes.

12 Q. So Government's Exhibit 15 is how you learned
13 of the state court felony conviction.

14 You mentioned a federal court conviction.

15 How --

16 A. Yes.

17 Q. -- did you learn that he had a federal felony
18 conviction?

19 A. We obtained certified records associated with
20 that federal felony conviction.

21 Q. I'm showing you now what has been admitted as
22 Government's Exhibit 13.

23 MR. DOMINGUEZ: Same objection, Judge, for the
24 record.

25 THE COURT: Same ruling.

1 BY MS. SADLO:

2 Q. What is Government's Exhibit 13?

3 A. It's a United States District Court for the
4 Southern District of Florida. It's the judgment -- or
5 imposition of sentence for a felony conviction associated
6 with bank fraud and conspiracy to commit bank fraud.

7 MS. SADLO: Your Honor, if I can have one
8 moment.

9 No further questions, your Honor.

10 THE COURT: Cross?

11 MR. DOMINGUEZ: If I may approach, your Honor?

12 THE COURT: You may.

13 MR. DOMINGUEZ: Your Honor, I'm going to need a
14 brief break. I was just handed the Jencks --

15 Is that correct?

16 MR. BAILYN: Yeah, that's correct.

17 MR. DOMINGUEZ: -- (Continuing) literally right
18 now.

19 THE COURT: All right. How long do you want?

20 MR. DOMINGUEZ: Just three minutes, if I may.

21 THE COURT: Go ahead. Sit down and start
22 reading.

23 MR. DOMINGUEZ: Thank you, Judge.

24 (Brief pause in proceedings.)

25 MR. DOMINGUEZ: I'm ready to proceed, your

1 Honor.

2 THE COURT: All right.

3 CROSS-EXAMINATION

4 BY MR. DOMINGUEZ:

5 Q. Good afternoon, Agent.

6 A. Good afternoon.

7 Q. Question: Do you know who submitted the
8 driver's license for Rod Lesperance?

9 A. No.

10 Q. You have no personal knowledge of that,
11 correct?

12 A. No.

13 Q. And the check that -- which you talked about,
14 which is part of Government's Exhibit 4, \$13,000, which
15 was used to pay rent, that would be paid to the -- for
16 the lease on his mother's property, where she was living?

17 A. First, I don't know for sure if it was for rent
18 or deposit, I do want to state that. I just know it
19 appeared to be associated with the apartment.

20 And, I'm sorry, what was the other question?

21 Q. No, that that was for the mom, or for the
22 property affiliated with the mom's lease.

23 A. I understood that check to be associated with
24 Unit 2004.

25 Q. Which the lease came back to the mother?

1 A. Yes, yes.

2 MR. DOMINGUEZ: Thank you. I have no further
3 questions.

4 THE COURT: Redirect, you're pretty darn
5 limited.

6 MS. SADLO: No, your Honor.

7 THE COURT: No redirect. All right. You're
8 excused, sir.

9 (Witness excused.)

10 THE COURT: Call your next witness.

11 MS. SADLO: Your Honor, the United States rests.

12 THE COURT: Ladies and Gentlemen, the United
13 States having rested, we have a couple minutes we have to
14 talk about some legal matters. If you go back into the
15 jury room, we'll call you out shortly.

16 COURT SECURITY OFFICER: All rise for the jury.

17 (Jury exits at 3:56 p.m.)

18 THE COURT: All right. Defense, are you ready
19 to proceed?

20 MS. BOZANIC: Yes, your Honor. Judge, let me
21 just get my case law, I'm sorry, just give me a second,
22 please.

23 Judge, at this time we will move for a Rule 29,
24 Motion for Judgment of Acquittal. The evidence presented
25 by the Government isn't sufficient to sustain a

1 conviction.

2 The defendant was charged in the indictment
3 with the unauthorized access device fraud with three
4 elements. The first element they must prove that
5 defendant knowingly and with intent to defraud used a
6 counterfeit access device, and that that access device or
7 the conduct affected interstate and foreign commerce, so
8 I just, I guess, said all the three elements.

9 One of the elements, which is with intent to
10 defraud, requires that a property or money is taken from
11 somebody, and there is case law on this, *U.S. versus*
12 *Saini*, it's a 9th Circuit appellate case from 2022. The
13 citation is 23 Federal 4th 1155. It's 9th Circuit 2022.
14 In that case, the 9th Circuit held that an intent to
15 deceive -- an intent to defraud is an intent to deceive
16 and cheat. An intent to deprive the victim of money or
17 property by deception.

18 They also discuss in their case -- when the
19 Government argued this, they basically said that this
20 goes together with the decision in the 11th Circuit
21 Court, and they talk about *U.S. versus Klopf*. That's
22 K-L-O-P-F. That's 423 Federal 3d 1228. This is an 11th
23 Circuit 2005 case that also holds for the same -- it
24 basically says that it aligns with the ruling, and it
25 requires an intent to deceive for purpose of causing

1 another to suffer financial loss or obtaining something
2 of value, and it quotes *U.S. versus Peden*, P-E-D-E-N,
3 556 Federal 2d 278. That is a 5th Circuit 1977.

4 In this case, your Honor, you heard testimony
5 that there was a fraudulent ID or an ID with the name of
6 Rob Lesperance. No one could testify, first of all, who
7 submitted -- and I'm talking specifically about the 2023,
8 the crime charged in the indictment. No one was able to
9 testify who provided this ID. The manager testified that
10 it happened to be in the file.

11 As far as the intent to defraud element, you
12 didn't hear from anybody being defrauded. There is no
13 money -- there's no money that was defrauded from
14 anybody, no property. The owner -- Marco Chique is the
15 owner of this property, of the Unit 2004. There is no
16 allegation that he was not paid rent. There was no
17 testimony from him that he was out for any money. And in
18 fact, the Government is arguing that the property
19 management company is the victim. They cannot be the
20 victim, your Honor, because they don't own this apartment
21 and they were not defrauded because my client didn't have
22 the intent to defraud because he didn't take anybody's
23 property or money. This should have been a state charge,
24 it is a possession or a use of a fraudulent ID, but for
25 the federal charges, this charge requires that there is

1 intent to defraud, and there was no intent to defraud in
2 this case. The Government has failed to show that.

3 Furthermore, the Government has failed to have
4 anybody identify Mr. Davis as the person who resided
5 there. The only person they had on the stand was Jeff
6 Jean-Pierre, who never identified Mr. Davis as Rod
7 Lesperance.

8 And as far as the third element, the interstate
9 commerce, there was some testimony that this submission
10 or this use of ID caused them to submit a credit
11 background check in another state. Essentially, they
12 used somebody else's name. There was a typo, there was
13 no Social Security used. It has the 999 on the
14 application. There is actually no application in the
15 2023 file, Rob Lesperance or whoever never even signed an
16 application intending to have a background check ran as
17 opposed to the other documents.

18 But, Judge, I think the main argument here
19 rests on the intent to defraud. Based on the case law
20 that I cited, there are plenty of cases that stand for
21 the same proposition that you have to have the financial
22 loss or obtaining something of value, and basically all
23 the case law says that the intent to defraud means to
24 cheat or to deceit -- I'm sorry, to have the deceit and
25 cheat somebody out of money or property. Mr. Davis did

1 not deceive or cheat anybody out of money or property.

2 The rent was paid, and that's what the evidence showed.

3 So for those reasons, we move for judgment of
4 acquittal.

5 MR. DOMINGUEZ: And no ID.

6 MS. BOZANIC: And the no ID. And we renew our
7 previous objections, your Honor.

8 THE COURT: All right. Government?

9 MR. BAILYN: Your Honor, I can respond to all
10 three points the defendant has made. Given the light
11 most favorable for the Government, there is more than
12 enough for a reasonable jury to find this defendant
13 guilty.

14 First, with regard to the use of a counterfeit
15 access device, the argument that there is no evidence,
16 that this defendant provided that device, is a red
17 hearing. What is required by the jury instructions is
18 that a person use an access device, which is defined as
19 any effort to obtain anything of value with a counterfeit
20 access device. This defendant did obtain a thing of
21 value.

22 As we learned from Mr. Jean-Pierre, the
23 defendant gained access to an exclusive residential
24 community, access to valet, access to mail, access to a
25 place he could call his home. That's very, very

1 valuable.

2 Second, with regard to the intent to defraud,
3 the defense continually cites, both here and in the jury
4 instructions, *United States versus Saini*, which is a 9th
5 Circuit case that is problematic for two reasons. First,
6 the language of *Saini* directly contradicts the jury
7 instructions in the 11th Circuit, which were promulgated
8 after *Saini* was decided. It's true, *Saini* does say that
9 there needs to be an intent to defraud and deceive. The
10 jury instructions from the 11th Circuit, rather, say that
11 an intent to defraud means to act with intent to deceive
12 or cheat, and then, usually for personal financial gain,
13 but not always for personal financial gain.

14 Whatever cases the defendant is citing by that
15 hole that there must be some sort of personal financial
16 gain are contradicted not only by the jury instructions,
17 but also by the 11th Circuit explicitly.

18 I can provide the case to your Honor, we have
19 it printed out, but recently in *United States versus*
20 *Ippolito*, 701 Federal Appendix 805 and 807, the 11th
21 Circuit specifically ruled: We have not held that the
22 intent to defraud can be shown only if the defendant has
23 both the intent to deceive and the purpose of causing
24 financial loss or receiving financial gain.

25 In fact, the 11th circuit hasn't addressed this

1 issue of the intent to defraud that the defense is
2 putting forth here.

3 And in *United States versus Waters*, which I can
4 also provide the Court, 937 F. 3d 1344, the defense asks
5 for a jury instruction similar to the one that defense is
6 arguing for here, this concept of deceit or deceive or
7 whatever it is. The 11th Circuit said that giving such a
8 jury instruction would have been an error. The
9 requirement that a defendant have the intent to -- or
10 whatever the defense wants to define it to be, but
11 without ever defining what that harm meant.

12 In this case, there was an intent to defraud,
13 to deceive, to defraud, to provide a false identity to
14 gain access to something that the defendant was not
15 entitled to. That's the definition of defraud. The
16 defendant gained access to a place that he was not
17 entitled to be in. That's access device fraud.

18 As to the third element, interstate commerce,
19 we had ample testimony from Mr. Jason Brown with regard
20 to where the information in these background checks comes
21 from. Clearly, he's running a national background check.
22 He's not doing it just in the State of Florida. He has
23 databases, as he explained, as far away as California.
24 That is the effect of interstate commerce. There is no
25 need in this case for us to be able to show the specific

1 intent that the defendant knew interstate commerce was
2 affected, only that interstate commerce was affected and
3 it was affected in this case.

4 The Government has provided sufficient evidence
5 for this jury, or any reasonable jury, to find this
6 defendant guilty beyond a reasonable doubt.

7 THE COURT: Did you ever have to consider the
8 possibility of having somebody point at him and say:
9 That's the guy that did it?

10 MR. BAILYN: Your Honor, we don't have the
11 person who is there when the defendant emailed this
12 driver's license, because this was emailed.

13 THE COURT: Is that a fatal flaw?

14 MR. BAILYN: No. There's more than enough
15 circumstantial evidence that it was this defendant who is
16 the one that used that driver's license. First, not only
17 does the driver's license show the defendant, not only
18 does the driver's license from before show the defendant,
19 but the lease that we're dealing with here, the one that
20 he was added as an occupant to, is his mother.

21 There is more than enough circumstantial
22 evidence for it to be this defendant and no one else who
23 would use a counterfeit driver's license --

24 THE COURT: How do we know it's his mother?

25 MR. BAILYN: We introduced the certified birth

1 certificate that shows Cynthia Stuckey --

2 THE COURT: Okay. I remember that now.

3 MR. BAILYN: -- is the defendant's mother.

4 There would be no one else in the entire world,
5 your Honor, that would be identically imaged as the
6 defendant, and also have the same mother.

7 THE COURT: I'll reserve ruling on this motion.

8 MR. DOMINGUEZ: His mother could have submitted
9 the ID.

10 THE COURT: It could have been --

11 MR. BAILYN: Again, the question is not
12 whether who someone submitted it --

13 THE COURT: It could have been Jack Spratt.

14 MR. BAILYN: -- but that someone used it. This
15 was the defendant who used it for his benefit.

16 THE COURT: I've reserved ruling.

17 What are we getting from the defense?

18 MS. BOZANIC: Judge, can we have a few minutes
19 just to discuss with our client whether he wants to put
20 on a defense.

21 THE COURT: Okay. Take a couple minutes.

22 (Court recessed from 4:08 p.m. to 4:14 p.m.)

23 THE COURT: All right. What's happening?

24 MS. BOZANIC: Just a moment.

25 Judge, we'll go ahead and rest when the jury

1 comes in.

2 THE COURT: No testimony from the defendant?

3 MS. BOZANIC: No testimony from the defendant.

4 THE COURT: All right. Mr. Davis, you have
5 spoken to your attorneys. I know you were outside for a
6 few minutes.

7 Have you had time to speak to your attorneys
8 about whether or not you want to testify in your own
9 defense?

10 THE DEFENDANT: Can I have a few more
11 seconds -- a few more minutes, Judge?

12 THE COURT: Well, we got to get moving one way
13 or the other. I don't really care what you do, but you
14 got to be prepared and ready to go. And we've waited
15 about 12, 13 minutes, I think.

16 If you want a couple more minutes, I'll give
17 you a couple more minutes there at the table, but that's
18 about it.

19 (Pause in the proceedings.)

20 MR. DOMINGUEZ: We'll proceed, Judge.

21 THE COURT: You're sticking with your decision?

22 MR. DOMINGUEZ: Yes.

23 THE COURT: All right. Mr. Davis, you
24 understand that you have the right to testify and that
25 you may voluntarily elect to testify in your own defense?

1 THE WITNESS: Yes.

2 THE COURT: You understand that you, and only
3 you, have a choice whether or not to testify, and only
4 you can make that decision, not your attorney or anyone
5 else?

6 THE DEFENDANT: Yes.

7 THE COURT: Has anyone attempted in any way to
8 force you not to testify?

9 THE DEFENDANT: No.

10 THE COURT: Have you personally made the
11 decision not to testify?

12 THE DEFENDANT: Yes.

13 THE COURT: All right. Then here's what we're
14 going to do. We'll recess for the day because I don't
15 think we can do final arguments and send the jury out. I
16 don't propose to pay the CSOs overtime to be here. As
17 much as they want to take the overtime, I don't think
18 it's fair to them, because I don't think they have money
19 for it.

20 We'll recess until tomorrow morning. I'll
21 bring the jury in, and I'll send them home for the night.
22 And we'll meet again tomorrow morning at 10:30.

23 I have physical therapy at 9:00. It goes from
24 9:00 to 10:00, and then I'll be in right after and as
25 soon as I can get dressed;.

1 Let's bring the jury in and we will talk to
2 them and tell them what we are doing.

3 Then we will proceed with final arguments and
4 go from there.

5 (Jury enters at 4:21 p.m.)

6 THE COURT: Please be seated. Make sure
7 everybody is here. Anybody that is not here, speak up.

8 Ladies and gentlemen, we're going to break for
9 the day at this time, and we're going to come back
10 tomorrow morning at 10:30. I have therapy in the morning
11 at 9:00, and I should be through by 10:00 or 10:15, and
12 I'll get here as soon as I can. I will put my long pants
13 on because it wouldn't be fair to the other gentlemen for
14 you ladies to see my legs. It would be extraordinary,
15 and you would be embarrassed. So I don't want to do
16 that.

17 So I'll wait until about 10:30, and we'll start
18 again then.

19 All right. Let me just get it done.

20 Defense, what is your position at this time?

21 MS. BOZANIC: At this time, defense rests.

22 THE COURT: All right. The Government having
23 rested and the defense having rested, it's ready for the
24 case to go to you.

25 Now, don't start thinking about the case

1 tonight. Don't start making your mind up. Wait until
2 you have the opportunity to have the benefit of the
3 closing arguments.

4 How long are you going to want for closing
5 arguments?

6 MS. SADLO: Your Honor, 15 minutes should be
7 sufficient for the first close; 30 minutes in total, I
8 would say, for first close and rebuttal.

9 THE COURT: So you want 30 minutes.

10 MS. SADLO: Yes, your Honor.

11 THE COURT: You'll take 30 minutes, too.

12 MS. BOZANIC: Judge, 30 should be fine.

13 THE COURT: So each side will take 30 minutes,
14 so that will let us have this before lunch. You guys
15 might even get a free lunch out of this. And then I'll
16 instruct you, and then we'll go from that point forward,
17 and it will be up to you. It doesn't mean the case four
18 hours so you need to take four hours. No. You can do it
19 four minutes or you can do it in four days. It's your
20 call, not mine. So we'll go from that point.

21 But you're reminded you are not to discuss the
22 case with anyone or permit anyone to discuss it with you.
23 Until you retire to the jury room at the end of the case
24 to deliberate your verdict, you're simply not to talk
25 about the case.

1 Also, remember you're not to read or listen to
2 anything touching on this case in any way. If anyone
3 should try to talk to you about the case, bring it to my
4 attention promptly.

5 Keep in mind you must not do any research or
6 make any investigation about the case on your own. The
7 only evidence in this case is the testimony of the
8 witnesses that you hear in court and the evidence that is
9 introduced during the official proceedings.

10 Also, remember you must not have any contact
11 with the attorneys, parties, or witnesses in the case.
12 If you should see them, keep in mind they're not being
13 rude to you. They are required to avoid any contact with
14 you. They're not permitted to talk to you, just as
15 you're not permitted to talk to them.

16 Finally, remember you must not form any opinion
17 about this case until all the evidence is in and all of
18 the arguments have been made, and you have received your
19 instructions on what the law is.

20 Keep an open mind until you start your
21 deliberations at the end of the case, which will be
22 tomorrow, just before or just after lunch. So I'll ask
23 you to please leave the floor quickly because I'm going
24 to ask the people that are here to wait in the courtroom
25 until you have had an opportunity to leave, and leave the

1 building.

2 All right. So come back tomorrow morning,
3 10:30, and come on and sit in the jury room as quickly as
4 you can get there.

5 You're excused.

6 (Jury exits at 4:24 p.m.)

7 THE COURT: You all can be seated. I would ask
8 that everybody remain in the courtroom for a few minutes
9 to let the jury clear the floor.

10 We'll go through the instructions at this point
11 so we can get an idea so you can prepare for your final
12 arguments knowing what instructions I propose to give.

13 MS. BOZANIC: Judge, I just wanted to renew our
14 previous judgment of acquittal argument. It's the same
15 argument that I made, and we renew our previous
16 objections and motions.

17 THE COURT: All right. And I will renew my
18 rulings, one of which is that I'm deferring.

19 MS. BOZANIC: Thank you, Judge.

20 THE COURT: All right. Proposed Instruction
21 No. 1 is the pattern 11th jury instruction agreed to by
22 the parties, the introduction.

23 First instruction is proposed jury instruction
24 No. 1, B1, introduction, pattern 11th Circuit instruction
25 with no changes.

1 Page 2 is Proposed Instruction No. 2, the duty
2 to follow instructions and the presumption of innocence,
3 pattern 11th Circuit instruction agreed to by the
4 parties.

5 Third is proposed B2.2, the duty to follow
6 instructions and the presumption of innocence when a
7 defendant does not testify. This is the instruction that
8 will be given since he has not testified. I think
9 between the two, we'll give the second, of course,
10 because he did not testify. I think it's basically --
11 no, I think both will be given. Let me see. I am not
12 sure. I don't think I need to give that. I don't see
13 any harm in giving both of those.

14 Does anybody object to my giving the one
15 Proposed Instruction No. 1, B1 and No. 2, B2.1 -- I'm
16 sorry.

17 I'm talking about B2.1 and B2.2. Of those two,
18 B2.2 is the one that I will give because the defendant
19 has not testified. So B2.1 will not be given. I'll X
20 that out and remove it from there.

21 Proposed Instruction No. 4 is B3, definition of
22 reasonable doubt, the pattern 11th Circuit instruction
23 agreed to by the parties.

24 Proposed Instruction No. 5, consideration of
25 direct and circumstantial evidence, argument of counsel,

1 comments by the Court, 11th Circuit instruction agreed to
2 by the parties.

3 Proposed Instruction No. 6 is B5, credibility
4 of witnesses, pattern 11th Circuit instruction, agreed to
5 by the parties will be given.

6 Proposed Instruction No. 7, B7, there was no
7 expert witness. I will not give this.

8 Any objection?

9 MS. BOZANIC: No, your Honor.

10 THE COURT: Proposed Instruction No. 8, I don't
11 think there is any inconsistent statements brought out in
12 this matter, is there anything you need for this
13 instruction?

14 MR. DOMINGUEZ: No.

15 THE COURT: I will not give this.

16 Proposed Instruction No. 9 is B8, and the
17 introduction. As you can see in the notes -- those notes
18 will be removed. The only thing that will be given to
19 the jury will be the regular print, not the bold print.
20 Agreed to by the parties, except the defendant proposed
21 quote: And said conduct affected interstate and foreign
22 commerce. But this is consistent with the pattern 11th
23 Circuit jury instruction. This is the instruction that I
24 will give.

25 Proposed Instruction No. 10, B10.1, punishment,

1 single defendant and single count, and that would be the
2 instruction that is given.

3 Proposed Instruction No. 11, on or about,
4 pattern 11th Circuit instruction, that's the one that
5 will be given.

6 Proposed Instruction No. 12 is B11, the duty to
7 deliberate. It is the pattern instruction agreed to by
8 the parties.

9 Proposed Instruction No. 13 is B12, verdict,
10 and I will give this but probably not exactly where I
11 have given it. I'm not sure exactly where I'll give
12 that, but I think it will be the last thing I give before
13 they walk off. It doesn't make any sense for it to be
14 any earlier than that.

15 Proposed Instruction No. 14, I don't think
16 that's really -- there's been no identification in this
17 case. The identification is based on pictures, not on
18 somebody pointing and saying, That's the guy that did it.

19 Is there a need for this instruction?

20 MR. BAILYN: No. This is not an in-person
21 identification. It's a circumstantial identification
22 case.

23 MR. DOMINGUEZ: Well, you do need the part that
24 it's the Government's burden beyond a reasonable doubt
25 that the defendant was the person who committed the

1 crime. We do have to have that.

2 THE COURT: Yeah, I don't see any problem with
3 that.

4 MR. DOMINGUEZ: And then it has at the end:
5 After examining all the evidence, if you have a
6 reasonable doubt that the defendant was --

7 THE COURT: Yeah, I will give the first and
8 last paragraph. I think that they are appropriate.

9 Any objection?

10 MR. BAILYN: That's fine, your Honor.

11 THE COURT: All right.

12 Proposed Instruction No. 15 is S4.1, similar
13 acts evidence. And this is the one that is explaining,
14 and I think that it is a pattern 11th Circuit
15 instruction, and it's appropriate that it be given as
16 modified. I will conform with the pattern 11th Circuit
17 instruction, so I changed it slightly.

18 The next one is note-taking is denied, as this
19 Court does not permit note-taking. It might be if it was
20 a complicated accounting case, but this case does not
21 require any notes, so I will not give that.

22 Proposed Instruction No. 17, similar acts
23 evidence, the Government's proposed instruction as
24 modified by this Court to conform with the pattern 11th
25 Circuit instruction.

1 Proposed Instruction 18, it is the pattern jury
2 instruction as modified by this Court to conform. In
3 other words, it was the instruction that was given as
4 modified by me to conform to the 11th Circuit pattern
5 jury instruction. I don't remember exactly what the
6 change was, but...

7 MR. DOMINGUEZ: May we have a moment, Judge,
8 please?

9 THE COURT: Okay.

10 MS. BOZANIC: You basically removed the --

11 MR. DOMINGUEZ: So you basically removed the
12 request by both parties, I think. You just left it
13 pattern.

14 THE COURT: Yeah.

15 MR. DOMINGUEZ: That's fine with me.

16 THE COURT: What was it you guys wanted added?

17 MR. BAILYN: The Government wished to add the
18 11th Circuit -- a quotation from the 11th Circuit case,
19 from multiple 11th Circuit cases, that the intent to
20 defraud is defined as the intent to obtain something to
21 which is the defendant is not entitled.

22 THE COURT: You can argue that to them.

23 MR. BAILYN: Thank you, your Honor.

24 THE COURT: I don't think there is any
25 objection to your arguing that to them. If there is, it

1 would be overruled because I think that that is case law.

2 MR. BAILYN: Thank you, your Honor.

3 THE COURT: I'll clean this up because it does
4 have too many parentheses and stuff in there, and we can
5 talk about it before we actually give it. Again, we'll
6 talk about it first. So you guys, you think about it,
7 and if you think I'm going to step on my tie, let me
8 know.

9 MR. DOMINGUEZ: We will, Judge.

10 THE COURT: Especially that last paragraph has
11 a lot of different paragraphs.

12 MR. BAILYN: It allows for interstate and
13 foreign commerce, I think foreign commerce --

14 THE COURT: I'm deleting the foreign commerce
15 part.

16 MR. BAILYN: Great. Thank you, your Honor.

17 THE COURT: So, Jessica, delete all the country
18 to state. I mean, in the first letter -- first sentence
19 of that you can say it affected interstate or foreign
20 commerce, but the Government must prove that the natural
21 concept for the act would be to affect interstate
22 commerce. You can just -- either one. Just delete it in
23 the first one, too. And you can delete the paragraph
24 immediately in front of it because foreign commerce is
25 not relevant in this case. The previous one paragraph is

1 the one that counts. Okay.

2 MR. DOMINGUEZ: Didn't we have already --

3 MS. BOZANIC: Number 19?

4 MR. DOMINGUEZ: -- a 404(b) one? We filed like
5 three of them.

6 THE COURT: That's No. 19. No, I don't think
7 it's the same, but...

8 MS. BOZANIC: I'm looking at 17 and 19, Judge,
9 just to compare.

10 THE COURT: I would think you'd want it said
11 twice, but I don't care.

12 MR. DOMINGUEZ: No, it is different. I was
13 making sure it wasn't --

14 THE COURT: Yeah, it's a little bit different.

15 MR. DOMINGUEZ: Yeah.

16 THE COURT: So moving on to 20, similar acts
17 evidence. It is a pattern 11th Circuit jury instruction.
18 And then, after this one is when I would give the verdict
19 form.

20 I will give actually the duty to deliberate and
21 the verdict form at the end of -- right after the one we
22 just talked about. So that will be the last two, will be
23 Proposed Instruction No. 12 and Proposed Instruction
24 No. -- I would assume 13, but I can't, my fingers are too
25 dry to get to it.

1 Yeah, proposed 12 and 13 will be the last two
2 instructions, okay? And if you come up with something
3 brilliant that you think I should substitute for one of
4 these when you're working on this into the wee hours of
5 the morning, I'll be happy to discuss it with you.

6 MR. BAILYN: Can I ask a quick procedural
7 question?

8 THE COURT: Sure.

9 MR. BAILYN: Do you instruct the jury before we
10 give the closing?

11 THE COURT: No, after. I have done it both
12 ways, but I've only done it before maybe three times in
13 23 years, so it's not really common. I've done it when
14 it was a very, very complicated case and they wanted to
15 get this in their mind before that, and both sides wanted
16 it. I didn't have any objection to doing it, but it
17 doesn't seem like a unnecessary thing to do in this case.

18 Okay. See you guys tomorrow, 10:30.

19 (Proceedings concluded at 4:36 p.m.)

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C E R T I F I C A T E

I certify that the foregoing pages represent a true and correct excerpt of the above-styled proceedings as reported on the date, time, and location listed.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was reported, and further that I am not financially nor otherwise interested in the outcome of the above-entitled matter.

DATE: 6/24/24 /s/Mary Ann Casale, RDR, FPR-C, CLR, CSR-IL
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